

UNIFORM COVER PAGE

[To be used when required by Administrative Order No. 2 (g)\*]

COURT: CIRCUIT COURT OF PULASKI COUNTY

Docket/Case Number: 60CV-21-3138

CASE NAME:

PLAINTIFFS: THE LEAGUE OF WOMEN VOTERS OF ARKANSAS, ET AL.

DEFENDANT: JOHN THURSTON, ET AL.

TITLE OF PLEADING OR  
DOCUMENT BEING FILED:

Plaintiffs' Response in Opposition to Motion for Summary Judgment

**EXHIBITS A-N**

\*Administrative Order No 2.

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# **EXHIBIT A**

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1 IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

2

3 THE LEAGUE OF WOMEN VOTERS OF ARKANSAS and ARKANSAS  
4 UNITED,

5 Plaintiffs,

6 vs. No. 60CV-21-3138

7 JOHN THURSTON, in his official capacity as the Secretary  
8 of State of Arkansas; and SHARON BROOKS, BILENDA  
9 HARRIS-RITTER, WILLIAM LUTHER, CHARLES ROBERTS, JAMES  
10 SHARP, and J. HARMON SMITH, in their official capacities  
11 as members of the Arkansas State Board of Election  
12 Commissioners,

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14 Defendants.

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VIDEOCONFERENCE DEPOSITION OF PATSY WATKINS  
TAKEN ON BEHALF OF THE DEFENDANTS  
ON DECEMBER 7, 2021, BEGINNING AT 9:27 A.M.  
ALL PARTIES APPEARING REMOTELY  
REPORTED BY KERRI PIANALTO, CCR

APPEARANCES:

By videoconference on behalf of the PLAINTIFFS

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1 By videoconference on behalf of the DEFENDANTS

2 Michael Mosley  
3 Caleb Conrad  
4 ARKANSAS ATTORNEY GENERAL'S OFFICE  
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7 501-682-2081  
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9  
10 Also present by videoconference: Amanda O'Neal and  
11 Richard Madison  
12  
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1 WHEREUPON,

2 PATSY WATKINS,

3 after having been first duly sworn, deposes and says in  
4 reply to the questions propounded as follows, to-wit:

5 DIRECT EXAMINATION

6 BY MR. MOSLEY:

7 Q Ms. Watkins, I'm Mike Mosley and I represent the  
8 State Board of Election Commission commissioners and the  
9 Secretary of State's office in this lawsuit of which  
10 you're a plaintiff. How are you doing today?

11 A I'm doing well. How are you?

12 Q Doing well. And you're in Springdale; is that  
13 correct?

14 A I'm in Fayetteville.

15 Q Fayetteville. Let me tell you the rules of  
16 depositions real quick just so you know. Have you ever  
17 been deposed before?

18 A No, sir.

19 Q Have you ever been a party to litigation before?

20 A No, sir.

21 Q Verbal answers are necessary for the court  
22 reporter to understand what you're saying because she's  
23 going to make the transcript of this later. Head nods and  
24 uh-huhs and huh-uhs don't pick up real well later. Let me  
25 finish my question, if you would please, before you answer

1 so that there's no crosstalk in the transcript. If you  
2 don't understand one of my questions, ask me to rephrase  
3 it, I'm happy to do that. If I ask you a question and you  
4 answer it, can I assume that you understood it?

5 A Yes.

6 Q Okay. That's the rules. So you're one of a  
7 number of the plaintiffs that have sued regarding four  
8 election procedural laws that were enacted at the last  
9 General Assembly and I just wanted to ask you a few  
10 questions. You voted absentee in the last two general  
11 elections?

12 A No, I did not. I voted in person.

13 Q Okay. And where do you vote? And you're --  
14 what's your last name again, ma'am?

15 A Watkins.

16 Q Watkins. Okay. Where did you vote? Where's  
17 your -- your voting site?

18 A My voting site is in Tontitown.

19 Q In Tontitown?

20 A Tontitown, uh-huh.

21 Q Good Italian food. Where -- where at in  
22 Tontitown?

23 A It's in the, I think they call it the community  
24 building for the St. Joseph's Catholic Church.

25 Q Could you turn your volume up maybe on your -- I

1     can't hear you as well as I might like to.

2           A     How about this?

3           Q     Let me hear you now.

4           A     How about this?

5           Q     That's great.

6           A     Okay.

7           Q     You are a member of The League of Women Voters;  
8     is that correct?

9           A     I am a member.

10          Q     It says you have not updated your registration,  
11     and I assume you mean your voter registration, is that  
12     correct, since 1984?

13          A     I have moved --

14                   MS. GAMBHIR: Objection, compound.

15          Q     (BY MR. MOSLEY) Okay. Have you updated your  
16     voter registration since 1984?

17          A     I have moved several times and changed my  
18     address for purposes of voting, yes.

19          Q     And when you changed your address, did you have  
20     to sign something?

21          A     To be honest, I don't recall. I expect I did.

22          Q     Where would you go -- where did you go, rather,  
23     to make these changes?

24          A     I don't recall. I would certainly, if I were  
25     doing that today, I would go online and find out what to

1     Watkins.

2           A     It would be pure speculation. That would be my  
3     guess.

4           Q     Let me ask a different question. You don't have  
5     a memory today of where you went to change your  
6     registration; is that correct?

7           A     That's correct.

8           Q     Okay. When was the last time you moved?

9           A     I moved into this house about 22, 23 years ago.

10          Q     So it says here in your allegation that you're  
11     deeply concerned that election officials will reject any  
12     absentee applications because of a perceived signature  
13     mismatch in the next election you vote in, but you just  
14     told me that the last two elections you voted in person;  
15     isn't that correct?

16          A     That is correct.

17          Q     Okay. It says you have arthritis in your hand  
18     and that affects how your signature now looks; is that  
19     correct?

20          A     That is correct.

21          Q     All right. Do you have a scanner?

22          A     I do have a scanner.

23          Q     Do you have a piece of paper and a pen with you?

24          A     I do.

25          Q     I would like you to sign your name for me. Can

1     you show that to the screen? It's not picking up. That's  
2     okay. Would you do me a favor and scan that -- oh, I  
3     almost saw it. Pull back a little bit, if you would. Up.  
4     Okay. Cool, thank you. Now, if you will scan that and  
5     send that to your attorneys after this deposition, I would  
6     appreciate it.

7             A     Certainly, yes.

8             Q     And I'm going to move for that to be attached as  
9     Exhibit A to this deposition. Is there any objection, Ms.  
10    Gambhir?

11                   (WHEREUPON, Exhibit A was marked for  
12    identification.)

13                   MS. GAMBHIR: No objection.

14             Q     (BY MR. MOSLEY) If you're concerned, Ms.  
15    Watkins, about your signature due to arthritis, have you  
16    considered going and updating your registration  
17    application with the county now?

18             A     I could certainly do that. Does this mean,  
19    though, that as my signature changes, which it's likely to  
20    do given that my arthritis is progressive, that I'm going  
21    to have to do this just on a regular basis before every  
22    election?

23             Q     Well, no, if you're voting in person, but I was  
24    just curious if you had done that. Let me ask you a  
25    different question.

1 vote in violation of the Arkansas Constitution. Explain  
2 to me what your allegation is here. It says, "She is  
3 concerned that the voter's support ban as well will impair  
4 her right to vote in violation of the Arkansas  
5 Constitution."

6 A Sure.

7 MS. GAMBHIR: Objection to the extent that it  
8 calls for a legal conclusion.

9 Q (BY MR. MOSLEY) I just want to note for the  
10 record counsel is agreeing this is a legal allegation, not  
11 a factual one. Thank you for conceding that. Thank you  
12 for conceding that.

13 Anyways, Ms. Watkins, you still answer the  
14 question.

15 A Could you repeat it, please?

16 Q Yeah. Here's what it says in the complaint as  
17 it pertains to you. This is the first amended complaint.  
18 "Ms. Watkins voted in person in the 2020 general election  
19 and had to wait in line for approximately an hour on a  
20 warm day." Is that true?

21 A That's true.

22 Q And so that would have been in November?

23 A Yes.

24 Q And that would have been in Tontitown?

25 A I voted early and so I had a choice of places to

1 Let's say in a November general election it's 100 degrees  
2 outside and it's a peculiar heatwave, right?

3 A Yes.

4 Q And this is my hypothetical. And you were going  
5 to vote that day, you knew the weather, would you take  
6 water with you?

7 MS. GAMBHIR: Objection to the extent it calls  
8 for speculation.

9 Q (BY MR. MOSLEY) You still answer, Ms. Watkins.

10 A Yes, I would.

11 Q And if you felt like the line was long -- let me  
12 ask you a different question. I'll withdraw that.

13 If you had known when you voted in 2020 that the  
14 line was going to be as long as it was at the Nat stadium,  
15 would you have taken a snack with you?

16 A I would not have taken a snack, I would have  
17 taken water. I have a kidney condition, a chronic kidney  
18 condition and it -- I need to have water periodically, so  
19 had I known that the line was going to be that long and I  
20 would be waiting that long, I would have taken water.

21 Q So let's say -- but you didn't know the line was  
22 that long, right?

23 A Correct.

24 Q And let's say somebody was offering -- you found  
25 out, you got there and you learned that it was long and

1 Q Did you know that fraudulent voting is a crime?

2 A Yes.

3 Q Would you agree with me that preventing crime is  
4 a laudable purpose?

5 A Yes.

6 Q Do you pay your bills by mail?

7 A Oh, a few, but fewer and fewer every year.

8 Q I think that's pretty common with all of us,  
9 right? The ones that you do pay by mail, let's say it's  
10 due on January 1st -- well, let's not use January. Let's  
11 use -- let's say it's due on November the 1st, your bill  
12 is, when would you send it? When would you send your  
13 check?

14 MS. GAMBHIR: Objection to the extent it calls  
15 for speculation.

16 Q (BY MR. MOSLEY) You still answer, Ms. Watkins.  
17 Let me ask you a better question. The last bill you paid  
18 by check by mail, how many days before it was due did you  
19 put it in the mail?

20 A My practice is to pay those bills within 24  
21 hours of getting them.

22 Q Me too. That's my choice. That is your choice  
23 as well, correct?

24 A Yes.

25 Q Are you more than a member of The League of



1 down and listen?

2 A My understanding is that it is.

3 Q Okay. How much do you pay in dues a year?

4 A I think it's around 40 bucks.

5 Q 40 bucks?

6 A Yeah.

7 Q And as I understand your testimony, you have now  
8 been a member for a couple years since you -- in Arkansas;  
9 is that correct?

10 A That's correct, two to three years.

11 Q Okay. Well, Ms. Watkins, what did the Secretary  
12 of State's office do wrong in your opinion in this lawsuit  
13 that you're a plaintiff in?

14 A Would you -- would you --

15 MS. GAMBHIR: Objection to the extent it calls  
16 for a legal conclusion.

17 Q (BY MR. MOSLEY) You still answer, Ms. Watkins.  
18 What did the Secretary of State's office do wrong in this  
19 lawsuit in which you are a plaintiff?

20 A My concern is that there are barriers or  
21 obstacles created and uncertainty created with respect to  
22 voting. I think that there are possibilities or potential  
23 for confusion about the voter support situation. I think  
24 that there are opportunities for difficulties, let's say,  
25 with the absentee application signature matching law, and

1 so bottom line, my concern is that there are obstacles  
2 there that make it -- that may not seem to be huge, they  
3 may seem to be very small, but they do represent an  
4 obstacle or something that can make it harder to vote.

5 Q But not you because you're going to vote in  
6 person?

7 A I don't know if I will vote in person --

8 Q Okay.

9 A -- in the next election.

10 Q And if you don't vote in person, do I understand  
11 that you may take the initiative of your own volition to  
12 update your signature on your voter registration?

13 MS. GAMBHIR: Objection to the extent it calls  
14 for speculation. You can still answer.

15 Q (BY MR. MOSLEY) Is that your plan?

16 A I'm sorry, would you ask that question again?

17 Q Is it your plan -- let me go back for just a  
18 moment. Withdraw that question. When you were talking  
19 about the barriers which you called they may not be big,  
20 they may be small, did I get that right?

21 A Yes.

22 Q When you were talking about that, are you  
23 talking about the enactment of particular laws that are  
24 barriers, is that what you're saying?

25 A I'm saying that my concern is with two parts,

1     okay, the voter support issue and with the signature  
2     issue, and with the voter support issue, I think it's  
3     vague and open to question about, you know, what a lawful  
4     purpose is. I think with regard to the signature issue  
5     that -- that someone like me who has an issue with my  
6     arthritis where my signature varies from day to day, it's  
7     totally unpredictable. I know that it's progressive and  
8     so therefore I would presumably be faced with changing or  
9     doing whatever I need to with regard to my voter  
10    registration to update that signature. I'm going to have  
11    to do that before every election, every coming election  
12    just to make sure I've got a current signature on record  
13    and for me that means -- that is what I would call making  
14    it harder for me to vote because I've got to remember to  
15    do that.

16           **Q     You're saying it makes it harder for you to vote**  
17   **by absentee if you have to update your signature before**  
18   **every election, is that --**

19           **A     I think that it's an unnecessary obstacle, yeah.**

20           **Q     Unnecessary?**

21           **A     Well, let me rephrase that. I don't mean**  
22   unnecessary, I mean that it places -- it requires me and  
23   anyone else in my situation to have to renew that voter  
24   registration before every election in order to keep a  
25   current signature on file.

1           Q     If you wrote your name twice, would you be able  
2     to tell if the two -- if you signed your name twice, do  
3     you think you would be able to tell that those look  
4     similar, I don't mean identical, I mean similar, your two  
5     signatures?

6           A     If I signed my name twice in a row?

7           Q     Yeah, could you say those look similar?

8           A     I suppose.

9                     MR. MOSLEY: Okay. I have no further questions  
10    if you guys want to follow up.

11                    MS. GAMBHIR: No follow up. Thank you.

12                    MR. MOSLEY: All right.

13                    (DEPOSITION CONCLUDED AT 9:27 A.M.)

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# EXHIBIT B

RETRIEVED FROM DEMOCRACYDOCKET.COM

1 IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

2

THE LEAGUE OF WOMEN VOTERS OF ARKANSAS and ARKANSAS  
3 UNITED,

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Plaintiffs,

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vs.

No. 60CV-21-3138

6

JOHN THURSTON, in his official capacity as the Secretary  
of State of Arkansas; and SHARON BROOKS, BILENDA  
7 HARRIS-RITTER, WILLIAM LUTHER, CHARLES ROBERTS, JAMES  
SHARP, and J. HARMON SMITH, in their official capacities  
8 as members of the Arkansas State Board of Election  
Commissioners,

9

Defendants.

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VIDEOCONFERENCE DEPOSITION OF NELL MOCK  
13 TAKEN ON BEHALF OF THE DEFENDANTS  
ON DECEMBER 6, 2021, BEGINNING AT 9:02 A.M.  
14 ALL PARTIES APPEARING REMOTELY  
REPORTED BY KERRI PIANALTO, CCR

15

APPEARANCES:

16

17

By videoconference on behalf of the PLAINTIFFS

18

Alexi Velez

Harleen Gambhir

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2 Michael Mosley  
3 Caleb Conrad  
4 ARKANSAS ATTORNEY GENERAL'S OFFICE  
5 323 Center Street, Suite 200  
6 Little Rock, Arkansas 72201  
7 501-682-2081  
8 michael.mosley@arkansasag.gov

9  
10 Also Present by videoconference: Rachel Kluender and  
11 Richard Madison  
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1 with questions and answers. We're not videotaping this.  
2 So the first one is if you'll let me finish my questions  
3 before you answer so there's no cross talk, and you're  
4 doing a real good job of that. The second one is you'll  
5 give verbal answers instead of head nods and uh-huhs and  
6 huh-uhs, and the only reason, it's hard to discern what  
7 that means on paper later.

8 A Yes.

9 Q If you don't understand one of my questions,  
10 just ask me to restate it or rephrase it, I have no  
11 problem with that. We won't be here long, but if you want  
12 to take a break, that's perfectly fine, too. I'm going to  
13 rely on your answers because these are under oath, so is  
14 it fair that if I ask you a question and you answer it I  
15 can assume you understood it?

16 A Yes.

17 Q Do you have any reason that you couldn't give  
18 truthful testimony here today?

19 A No.

20 Q Memory, medication, anything like that that  
21 would cause you to not be able to give truthful answers  
22 here today?

23 A No, I should be able to give truthful answers.

24 Q Okay. Are you from Little Rock?

25 A I'm originally from Texas, but I have lived in



1 Q Oh, yeah.

2 A Yes.

3 Q I have a friend that goes down there. I didn't  
4 know if there was other University of Texas campuses or --  
5 I'm sure there are.

6 A There are. They're all over, yeah.

7 Q Okay. So your age is 72; is that correct?

8 A 73 now. I've had a birthday.

9 Q Happy birthday. You registered to vote in 2001  
10 in Arkansas; is that correct?

11 A Well, I registered originally in 1992 when I  
12 moved here, but I registered at my current address in  
13 2001.

14 Q Tell me about the process that you had to go  
15 through registering to vote when you moved in '92 and then  
16 we'll get to 2001 after that.

17 A Gosh, it's been a while, but as best I remember,  
18 I filled out a registration form and indicated that I had  
19 previously been registered in the last state that I lived  
20 in so that they would know, you know, they had to cancel  
21 that registration.

22 Q Did you sign something, an application to  
23 register?

24 A Yes, I signed then under my married name which  
25 was Nell Irene Mock, I think. Or I think it was Nell

1 Irene Matthews Mock, my whole, full name.

2 Q Okay.

3 A And then when I divorced, it became Nell

4 Matthews Mock.

5 Q So you were in litigation, at least domestic

6 relations litigation, when you got divorced?

7 A Gosh, you're right. Yes, I was.

8 Q Okay. So and where did the divorce occur, here

9 in Arkansas?

10 A Here in Little Rock.

11 Q Pulaski County?

12 A Yes.

13 Q And then what was the occasion for you to update

14 your registration in 2001?

15 A I moved to my current address.

16 Q So you went back and filled out another

17 application?

18 A Yes.

19 Q Did you sign your name then?

20 A Yes, I signed it with my then new legal name,

21 Nell Matthews Mock.

22 Q And you allege that you have arthritis in your

23 hands?

24 A I do.

25 Q When did you develop arthritis in your hands?

1           A       Well, it's been something that has been slowly  
2   developing. I have arthritis in my knees, my hip. I've  
3   had a hip replacement. One shoulder that I had damaged  
4   previously has now got arthritis in it and I have it in my  
5   left hand. I've broken -- in the past I learned through  
6   X-rays that I had broken my wrist in my left hand. It was  
7   apparently just a, you know, hairline fracture that's  
8   healed without any medical treatment, but when I overuse  
9   my left hand, it will swell up and I have what they  
10   call -- what do they call those things? They're the  
11   little sack filled things that will develop when you have  
12   stress on your hands.

13           Q       **Enchondromas?**

14           A       No, it's --

15           Q       **Cyst?**

16           A       Well, it's like a cyst, but it's a -- it's a  
17   bursa, I think is the right name.

18           Q       **Oh, bursa. I had an enchondroma removed from my**  
19   **finger and I used Dr. Wyrick. She's great, Theresa**  
20   **Wyrick.**

21           A       That's who I see.

22           Q       **She's the best. I've had a lot of surgery, too,**  
23   **so I'm with you. Did you injure your shoulder playing**  
24   **tennis?**

25           A       No, I fell off a skateboard.

1 Q Oh, my goodness.

2 A It was a Razor -- Razor skateboard thing.

3 Q Yeah, I fell off one of those, too. We should  
4 probably stay off those.

5 A Yes. I don't ride it anymore. It went away in  
6 a garage sale.

7 Q Have you noticed because of arthritis -- or are  
8 you a left-handed person?

9 A Yes, I am.

10 Q Have you noticed because of arthritis any change  
11 in your signature over the years?

12 A What happens is when -- I don't know what  
13 medical -- I'm sorry, I have paint on my hands. I don't  
14 know what's medically going on in my hand, but when I  
15 overuse it, I get cramps and it's like something catches  
16 in the left-hand side and so if I'm doing something like  
17 I'm raising funds and I have to sign my name a bunch of  
18 times to letters, you know, the begging letters, after a  
19 while my signature gets worse and worse and worse because  
20 my hand cramps up. I don't know if you can see, but this  
21 thumb is not the same. Yeah, there's a good vision. It  
22 cants off. They tell me that I've lost all the connective  
23 tissue in there, it's worn away and it's bone on bone now,  
24 so I still can hold the pen, but these things all at  
25 various times in various situations cause me issues. You

1 My good friend Kit Murphy does that. Thank you. I need  
2 to get into doing that.

3 A I take the cardboard out to the recycle center  
4 out by the airport. There's a ton of cardboard --

5 Q Oh, Goldmans? Goldman?

6 A There's a ton of cardboard that comes from the  
7 food pantry boxes and there is a natural resources  
8 facility for recycling and so --

9 Q You don't mean the paper company Goldman?

10 A No, I go to --

11 Q Did you see they had a fire the other day?

12 A No.

13 Q Yeah. I used to drop paper off there for my  
14 mom --

15 A Wow.

16 Q -- computer paper and she said I could keep the  
17 money that I got because computer paper apparently -- I'd  
18 get like five or ten bucks, but I'd do it.

19 When was the last time you voted in person?

20 A Oh, November 9th of 2021.

21 Q And what election was that?

22 A It was the library millage increase.

23 Q Oh, you did vote in that. How far away is your  
24 polling place from your home?

25 A It's walkable. It's less than a mile, I would

# EXHIBIT C

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VIDEOCONFERENCE DEPOSITION OF DORTHA DUNLAP  
13 TAKEN ON BEHALF OF THE DEFENDANTS  
ON DECEMBER 7, 2021, BEGINNING AT 3:33 P.M.  
14 ALL PARTIES APPEARING REMOTELY  
REPORTED BY KERRI PIANALTO, CCR

15

APPEARANCES:

16

17

By videoconference on behalf of the PLAINTIFFS

18

Alexi Velez

19

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1 By videoconference on behalf of the DEFENDANTS

2 Michael Mosley  
3 Caleb Conrad  
4 ARKANSAS ATTORNEY GENERAL'S OFFICE  
5 323 Center Street, Suite 200  
6 Little Rock, Arkansas 72201  
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8 michael.mosley@arkansasag.gov  
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Also present by videoconference: Amanda O'Neal and  
Richard Madison

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1 WHEREUPON,

2 DORTHA DUNLAP,

3 after having been first duly sworn, deposes and says in  
4 reply to the questions propounded as follows, to-wit:

5 DIRECT EXAMINATION

6 BY MR. MOSLEY:

7 Q Ms. Dunlap, I'm Mike Mosley and I represent the  
8 Secretary of State and the State Board of Election  
9 Commission offices in this lawsuit, okay?

10 A Yes.

11 Q And you have been named as a plaintiff and it  
12 says here that you live in Springdale; is that correct?

13 A Yes.

14 Q Do you live in the corporate limits of  
15 Springdale or do you live in the county?

16 A The corporate limits.

17 Q Where's your closest voting location?

18 A I think maybe at the church.

19 Q How far away is that?

20 A I'm not sure.

21 Q Sure, that's fine.

22 A We're a block off Turner and it's on Turner and  
23 I'm not quite sure how far down it is.

24 Q How long have you been a resident of Washington  
25 County or are you in the Benton County part of Springdale?

1 A Washington County.

2 Q Are you aware that city goes over both counties  
3 like that?

4 A Strange.

5 Q It's strange I know. I've represented that city  
6 before many times and it is strange.

7 A There are other places, Tulsa does that.

8 Q Does it?

9 A Yeah.

10 Q That's where my wife is from?

11 A It's Tulsa County and Osage County both.

12 Q It says here that you're 85. Are you still 85?

13 A Not anymore.

14 Q 86?

15 A I'm 86 now.

16 Q Okay.

17 A I had a birthday in August.

18 Q Do you still use a walker?

19 A Yes.

20 Q Is it -- is it one of those that has the brakes  
21 on it that rolls or is it one of those that --

22 A Yeah, the roller with a seat on it.

23 Q Be careful --

24 A The computer is on the seat of it now.

25 Q Well, I was just telling you to be careful, some

1 of those things have knobs on the outside of them that  
2 stick out. I don't like those knobs, they make me  
3 nervous. It says here you're a member of The League of  
4 Women Voters; is that correct?

5 A Yes.

6 Q How long have you been a member of the League?

7 A It will -- well, it will be almost 53 years.

8 Q Wow.

9 A I celebrated my 50th in '19.

10 Q Congratulations. That is an accolade. It says  
11 you try to vote in every election. Did you vote in the  
12 2020 presidential election?

13 A Yes.

14 Q How did you vote, in person or by absentee?

15 A Absentee.

16 Q Okay. Have you voted since then in any local  
17 elections?

18 A Yes, except I don't think the election has been  
19 held yet, but the runoff for the -- there's a runoff going  
20 on now, my state senator district.

21 Q What about wasn't there a recent tax election in  
22 Washington County?

23 A I don't think it affected me, affected our area.

24 Q It says here you registered at your current  
25 address in 2017; is that correct?

1 Q Oh, okay. That also Oklahoma, though, right?

2 A Oh, yeah. It's about 50 miles north of Tulsa.

3 Yeah, I lived -- I lived there ever since I was married.

4 My husband made his home there.

5 Q I mean, since 2017, do you think your signature  
6 looks similar to the way it looked in 2017 to it does now?

7 A I don't know. It depends sometimes on how I'm  
8 feeling and whether I'm having more or less trouble with  
9 my hands stiffening.

10 Q Does that happen --

11 A It's arthritis and neuropathy both as a  
12 result -- actually, which came on me after finishing  
13 cancer treatment.

14 Q Yes, ma'am, and I saw that in there and I'm glad  
15 you made it through that.

16 A Yeah, I just passed my five year birthday or  
17 whatever it is.

18 Q Right. Congratulations.

19 A Yeah.

20 Q So did you know that if you're concerned about  
21 your signature being different you can go to the county  
22 and update your application and your registration?

23 A This is something that if I have a good, solid  
24 place that I'm writing on and it's not a bad day, my  
25 signature is kind of one level and probably is closer to

# EXHIBIT D

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1 IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

2

3 THE LEAGUE OF WOMEN VOTERS OF ARKANSAS and ARKANSAS  
4 UNITED,

5 Plaintiffs,

6 vs. No. 60CV-21-3138

7 JOHN THURSTON, in his official capacity as the Secretary  
8 of State of Arkansas; and SHARON BROOKS, BILENDA  
9 HARRIS-RITTER, WILLIAM LUTHER, CHARLES ROBERTS, JAMES  
10 SHARP, and J. HARMON SMITH, in their official capacities  
11 as members of the Arkansas State Board of Election  
12 Commissioners,

13

14 Defendants.

15

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18 VIDEOCONFERENCE DEPOSITION OF LEON KAPLAN  
19 TAKEN ON BEHALF OF THE DEFENDANTS  
20 ON DECEMBER 6, 2021, BEGINNING AT 12:59 P.M.  
21 ALL PARTIES APPEARING REMOTELY  
22 REPORTED BY KERRI PIANALTO, CCR

23

24 APPEARANCES:

25

26 By videoconference on behalf of the PLAINTIFFS

27

28 Meaghan Mixon  
29 Alexi Velez  
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1 By videoconference on behalf of the DEFENDANTS

2 Michael Mosley  
3 Caleb Conrad  
4 ARKANSAS ATTORNEY GENERAL'S OFFICE  
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9  
10 Also present by videoconference: Amanda O'Neal and  
11 Richard Madison  
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1 WHEREUPON,

2 LEON KAPLAN,

3 after having been first duly sworn, deposes and says in  
4 reply to the questions propounded as follows, to-wit:

5 DIRECT EXAMINATION

6 BY MR. MOSLEY:

7 Q Mr. Kaplan, I've introduced myself. I'm Mike  
8 Mosley and I represent the defendants in this lawsuit of  
9 which you are a plaintiff. Are you a member of either The  
10 League of Women Voters or Arkansas United?

11 A I am not.

12 Q You're not, okay. Are you 78 years old, sir?

13 A I am 79 years old. I turned 79 October 23rd.

14 Q Are you a Libra?

15 A I'm a Scorpio.

16 Q Scorpio. So I'm in the Libra -- I'm the 9th, so  
17 we're close there.

18 A So is my ex-wife.

19 Q Yeah, well, I don't know her, so they didn't  
20 introduce me at the meeting. You moved from Texas in  
21 2019?

22 A Yes.

23 Q Where did you live in Texas?

24 A I lived in Sugarland, Texas.

25 Q Oh, okay. Is this the first time you have lived



1 A I do have a driver's license.

2 Q Do you have an Arkansas driver's license?

3 A I do have an Arkansas driver's license.

4 Q Okay. So you don't need to rely on an affidavit  
5 to vote any longer, correct?

6 A Any longer, that would be true.

7 Q Did you vote in the recent school tax election?

8 A I did.

9 Q Okay. And how -- what was your manner of voting  
10 in that election?

11 A Are you asking me if I voted to support the  
12 tax or --

13 Q Oh, no, no, no, no, no. Please don't tell me  
14 that. I'm saying did you vote in person, did you vote  
15 absentee?

16 A I voted in person.

17 Q Okay. Where did you vote, where was the  
18 location?

19 A It was a library that is about two miles from  
20 where I live. I cannot -- I cannot tell you the name of  
21 the library.

22 Q Okay. In what general area of town do you live?

23 A I live in Parkway Village which is on Chenal  
24 Parkway which is west Little Rock.

25 Q I'm not very familiar with that. I'm in North

1 required for me to get a license registered in the state  
2 of Arkansas if there had been a long line requiring me to  
3 stand in line for a length of time, I could not have done  
4 that. So, yes, I would have needed assistance, yes.

5 Q (BY MS. MIXON) So do you have concerns about  
6 whether your daughter will be permitted at the polling  
7 place under the --

8 MR. MOSLEY: Objection to form, asked and  
9 answered repeatedly. Please answer, Mr. Kaplan.

10 Q (BY MS. MIXON) I haven't finished the question.  
11 Do you have concerns about whether your daughter will be  
12 permitted within 100 feet of the polling place under the  
13 new laws?

14 A Yes.

15 Q Okay.

16 A I do have concerns about that.

17 Q Do you recall from your complaint that it says  
18 that it's only lawful for people who are casting their  
19 ballot to go within 100 feet of the polling place?

20 MR. MOSLEY: Objection to form, counsel is  
21 testifying.

22 A You both have lost me. Go ahead, one more time.  
23 Meaghan, are you going to --

24 Q (BY MS. MIXON) Yes. Give me just a second, Mr.  
25 Kaplan. Do you recall -- do you recall that it says only

# EXHIBIT E

RETRIEVED FROM DEMOCRACYDOCKET.COM

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
FIFTH DIVISION

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THE LEAGUE OF WOMEN VOTERS OF )  
ARKANSAS, ARKANSAS UNITED, )  
DORTHA DUNLAP, LEON KAPLAN, )  
NELL MATTHEWS MOCK, JEFFREY RUST, )  
AND PATSY WATKINS, )  
 ) CASE NO.  
PLAINTIFFS, ) 60CV-21-3138  
 )  
v. )  
 )  
JOHN THURSTON, IN HIS OFFICIAL )  
CAPACITY AS THE SECRETARY OF STATE OF )  
ARKANSAS; AND SHARON BROOKS, BILENDA )  
HARRIS-RITTER, WILLIAM LUTHER, )  
CHARLES ROBERTS, JAMES SHARP, AND )  
J. HARMON SMITH, IN THEIR OFFICIAL )  
CAPACITIES AS MEMBERS OF THE ARKANSAS )  
STATE BOARD OF ELECTION )  
COMMISSIONERS. )  
 )  
DEFENDANTS. )  
 )

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VIDEOTAPED DEPOSITION OF JEFFERY RUST  
TAKEN REMOTELY VIA ZOOM VIDEOCONFERENCE  
TUESDAY, DECEMBER 7, 2021

Reported by Audra E. Cramer, CSR No. 9901

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DIGITAL EVIDENCE GROUP  
1730 M Street, NW, Suite 812  
Washington, D.C. 20036  
(202) 232-0646

1           VIDEOTAPED DEPOSITION OF JEFFERY RUST,  
2    TAKEN REMOTELY VIA ZOOM ON BEHALF OF PLAINTIFFS,  
3    AT 12:59 P.M. CST, TUESDAY, DECEMBER 7, 2021, BEFORE  
4    AUDRA E. CRAMER, CSR NO. 9901, PURSUANT TO NOTICE.

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1 stores.

2 And I did handyman work before I  
3 retired. I got old enough for Social Security  
4 and started taking it.

5 Q. Let me stop you for just one second,  
6 Mr. Rust. I think our court reporter is having  
7 trouble with the audio.

8 (Discussion held off the record.)

9 MS. VELEZ: Can we go off the record  
10 for one second to see if we can get Mr. Burns to  
11 come in and help with the audio?

12 Is that okay with you Mr. Mosley?

13 THE VIDEOGRAPHER: The time is  
14 1:04 p.m. Off the record.

15 (Discussion held off the record.)

16 THE VIDEOGRAPHER: The time is  
17 1:08 p.m. Back on the record.

18 BY MS. VELEZ:

19 Q. Mr. Rust, where do you live?

20 A. I live at 3650 Wilson Hollow Road,  
21 Fayetteville, Arkansas.

22 Q. How long have you lived there?

1           A.     Thirty years probably.  Something like  
2     that.  Maybe more.

3           Q.     Are you registered to vote at that  
4     address?

5           A.     Yes, I am.

6           Q.     How long have you been registered to  
7     vote at that address?

8           A.     As long as we've lived there.

9           Q.     When did you first register to vote?

10          A.     I'm not sure of the year when -- I was  
11     waiting to turn 21 when they passed the, I  
12     think, 26th Amendment that let 18-year-olds  
13     vote, and then I went out and registered at that  
14     time, whenever that was.  And I've pretty much  
15     been registered wherever I've lived since then.

16          Q.     How often do you vote?

17          A.     Most all the time.  I mean, I've missed  
18     some, but I try and vote.  I believe in it.

19          Q.     Is voting important to you?

20          A.     Yeah.  Yeah.  I mean, it's kind of the  
21     foundation of a representative democracy.

22          Q.     What was the last election that you

1 voted in?

2 A. I think it was a local extension of the  
3 sales tax.

4 Q. Do you remember when that was?

5 A. Not exactly. Within the last six  
6 months. Maybe four or five months ago.  
7 Something like that.

8 Q. By what method of voting did you cast  
9 your ballot in that election?

10 A. Texas screen machine.

11 Q. Does that mean you voted in person?

12 A. Yes.

13 Q. Do you remember where it was that you  
14 voted?

15 A. Yeah. I think it was the old Methodist  
16 church on MLK, Martin Luther King Avenue. They  
17 let us vote at any location here usually.

18 Q. Why didn't you vote absentee in that  
19 election?

20 A. Because I wasn't set up to do it.

21 Q. Do you usually vote absentee?

22 A. No. The last big general election was



1 the only time I did. I'd like to do it all the  
2 time. You know, we've got the pandemic going  
3 on, and I'd had a lung surgery, and I really  
4 didn't want to be in a room with anybody else  
5 very much.

6 Q. Do you have any other disabilities that  
7 make it difficult for you to vote in person?

8 A. Yeah. I have some chronic back and  
9 neck pain. It makes it hard to stand and wait.  
10 And I tend to get claustrophobic and kind of  
11 some anxiety in a crowd like that, which I guess  
12 may not be a physical disability, but it's real  
13 to me.

14 Q. Understood, yeah.

15 I think you say in the complaint that  
16 you prefer to vote absentee; is that correct?

17 MR. MOSLEY: Objection. Counsel  
18 drafted the complaint, not Mr. Rust.

19 Please go ahead, Mr. Rust.

20 THE WITNESS: Do what now?

21 BY MS. VELEZ:

22 Q. Mr. Rust, is it fair to say that you

1 clerk's office, and I filled it out, and I think  
2 mailed it in.

3 Q. When you filled out that application,  
4 did you need to sign your name?

5 A. Yes.

6 Q. Do you have any difficulty in signing  
7 your name?

8 A. Yeah. I have some -- developed some  
9 tremors, and I have problems with my eyesight  
10 where I have to bend down and get right up on  
11 the paper to do it.

12 Q. Do you have any --

13 A. And it's just hard for me to see what  
14 I'm doing sometimes because my right eye is  
15 really bad. My left eye is still pretty good,  
16 but the way our vision works is in stereo, and  
17 I'm going along good and then there's a blank  
18 spot.

19 Q. Do you have any difficulty with  
20 handwriting besides just signing your signature?

21 A. Yeah, a little bit. I don't write a  
22 whole lot anymore.

1 vision.

2 I drive some. I just have to get out  
3 when it's -- I usually drive on the back roads  
4 just to be out free a little bit. My wife does  
5 most of the driving, and she doesn't like  
6 driving at night anymore. Our age is catching  
7 up with us.

8 Q. Yeah, I don't care for driving at night  
9 much either.

10 Okay. And you told me that you voted  
11 absentee in 2020; is that right?

12 A. Yes.

13 Q. You filled out the form and you had to  
14 sign the form; is that right?

15 A. Correct.

16 Q. Did you ultimately receive an absentee  
17 ballot in 2020?

18 A. Yes.

19 Q. And did you return that absentee  
20 ballot?

21 A. Yes.

22 Q. How did you return it?

1           A.     They had a drive-through drop-off at  
2     the courthouse, and I believe that was on a  
3     Saturday morning that I turned it in.

4           Q.     And did you drive yourself to drop the  
5     ballot off?

6           A.     No.

7           Q.     Who drove you?

8           A.     My wife, Trudy.

9           Q.     I want to go back to your signature a  
10    bit. I think you told me that your signature is  
11    affected by vision and also tremors.

12                Can you tell me a little bit more about  
13    the tremors.

14           A.     In high school football I injured my  
15    neck. Made a good block, and the linebacker got  
16    up, and I didn't. My whole left side went numb,  
17    which is not my dominant side, but I've  
18    developed tremors in the last few years in both  
19    hands.

20                And I don't know if it has much -- I  
21    think it has something to do that I'm also a  
22    recovering alcoholic. And that may have

1 something to do with it. I don't know. I  
2 haven't had a drink in, like, 20 years now, so I  
3 [indecipherable].

4 I think -- I've got what the  
5 chiropractor calls subluxation, too, in my lower  
6 neck and one in my lower back, last lumbar  
7 vertebrae, which are pinched nerves basically.

8 Q. Between the pinched nerve and the  
9 tremors and the macular degeneration, do these  
10 things affect your ability to sign the same way  
11 from one day to the next?

12 A. Yeah, I can tell the difference.

13 Q. Has anybody else ever been able to tell  
14 the difference or remarked on your signature?

15 A. Yeah. One time years ago we were on  
16 vacation in Mexico. They would not cash a  
17 traveler's check for me because it was -- didn't  
18 match very well.

19 Q. Got it.

20 Are you --

21 A. That was in the early days of my  
22 sobriety -- or recovery, I should say.

1 Q. Understood.

2 And the reason they did not accept the  
3 traveler's check was because the signatures were  
4 dissimilar?

5 MR. MOSLEY: Objection. Leading.

6 BY MS. VELEZ:

7 Q. You can answer, Mr. Rust.

8 A. Yeah, they didn't, like, think it  
9 matched.

10 Q. Understood.

11 Are you concerned that an absentee  
12 ballot application might be rejected in the  
13 future because of your signature?

14 MR. MOSLEY: Objection. Speculation.

15 BY MS. VELEZ:

16 Q. You can answer.

17 A. Yes. Yeah, of course I am. That's  
18 part of why I'm here.

19 Q. What is your understanding of the law  
20 that we call -- that we've referred to as the  
21 absentee application signature match law?

22 A. That my application signature has to

1 match my original voter registration signature,  
2 which I don't know how long ago that was. I  
3 registered, but I'm pretty sure my signature's  
4 different now than it was then.

5 Q. And, Mr. Rust, if you were to  
6 reregister to vote, do you have any concern that  
7 your signature might still change between now  
8 and October 2022?

9 A. Yes.

10 Q. Let's go back to the absentee ballot  
11 that you returned in person for the 2020 general  
12 election.

13 Why did you return it in person?

14 A. Because there were questions on mail  
15 delivery at that time. They were getting rid of  
16 sorting machines, and our own mail delivery  
17 became kind of sporadic. We'd go days sometimes  
18 without any mail and then get a boxful.

19 And I just -- I wanted to make sure my  
20 ballot got in, and it looked like the mail might  
21 not be reliable at that time.

22

1 BY MS. VELEZ:

2 Q. Do you have any concerns that the mail  
3 might not be reliable in future elections?

4 MR. MOSLEY: Objection. Calls for  
5 speculation. Objection. Leading.

6 BY MS. VELEZ:

7 Q. Do you have any continuing concerns  
8 about the mail?

9 A. Yes, I do. Yes, I do.

10 Q. What are your concerns?

11 A. Well, there's an attempt to slow it  
12 down, to make -- I think they're trying to  
13 commercialize it more, turn it into a private  
14 industry than a government function.

15 Q. And is it possible that you might vote  
16 absentee in the future?

17 MR. MOSLEY: Objection. Calls for  
18 speculation.

19 THE WITNESS: Yes, I'd like to.

20 BY MS. VELEZ:

21 Q. If you were to vote absentee in the  
22 future, would you consider returning your



1 absentee ballot in person in the future?

2 A. Yes. Yes, I would.

3 Q. We're also challenging the law that  
4 we've referred to as the in-person ballot  
5 receipt deadline.

6 Are you familiar with that law?

7 MR. MOSLEY: Objection. Counsel's  
8 testifying.

9 BY MS. VELEZ:

10 Q. Are you familiar with the law,  
11 Mr. Rust, that changes the deadline to return  
12 in-person absentee ballots?

13 A. Yes.

14 Q. Are you --

15 A. They want to --

16 Q. Please go ahead.

17 A. They want to change it from Monday  
18 before the election to the Friday before the  
19 election, cutting out the weekend.

20 Q. And are you a Plaintiff in this lawsuit  
21 challenging that law?

22 A. Yes, I am.

1 support ban?

2 A. It's something about only individuals  
3 with a lawful purpose are permitted -- well,  
4 within, I think, 100 feet of a polling place,  
5 which kind of invites definition. "Only lawful  
6 people" might be people waiting to vote and poll  
7 workers.

8 And like I said, my age is catching up  
9 with me. I kind of like having somebody waiting  
10 in line with me, and it sounds like that they  
11 might not be allowed to help me.

12 Q. If someone is not able to wait in line  
13 with you to vote in person, would that make it  
14 more difficult for you to vote in person?

15 A. Yes.

16 Q. When you voted in person in the last  
17 election, did you have anyone with you?

18 A. Yes. My wife and I went together.

19 Q. Had your wife already voted at that  
20 point?

21 A. No. No.

22 Q. Had your wife already voted, do you

1 believe she would have been able to support you  
2 in light of the voter support ban?

3 A. I don't know. I don't know. Like I  
4 said, it kind of begs definition.

5 MS. VELEZ: Okay. I don't have  
6 anything further at this time, Mr. Rust. I'm  
7 just going to ask you to wait because Mr. Mosley  
8 has some questions.

9  
10 EXAMINATION

11 BY MR. MOSLEY:

12 Q. Hey, Mr. Rust. There's -- there are  
13 rules to depositions, but I'm not going to tell  
14 you them, because you're doing a great job.  
15 Let's just keep on moving here.

16 What about the reverend -- let's say  
17 that the Methodist church down there on MLK --  
18 which that used to be 6th Street or -- is that  
19 right?

20 A. I think so.

21 Q. What if the reverend during voting was  
22 going to his office and wasn't going to vote and

1 A. No, not much of a line. There's  
2 usually not in a tax election.

3 Q. Except for 2020, you've always voted in  
4 person; correct?

5 A. Correct.

6 Q. And you voted by absentee drop-off in  
7 2020 because of COVID; correct?

8 A. Yes.

9 Q. Okay. And so you dropped the ballot  
10 off two days before it was due; correct?

11 A. I believe so.

12 Q. And so --

13 A. I don't know how many --

14 Q. It may have been what?

15 A. I don't know if it was that -- election  
16 week or a week before. I don't -- I think it  
17 was right before the election.

18 Q. But it could have been a week before  
19 the election you dropped it off?

20 A. Yeah, I don't remember. I don't  
21 remember.

22 Q. Is that because you had your absentee

1 called the voter support ban -- which, by the  
2 way, that's not what it's called.

3 But what part of the law says your wife  
4 can't accompany you in that 100-foot perimeter  
5 into the polling vicinity?

6 Can you tell me what the law says that  
7 says you can't have anybody accompany you if you  
8 need help?

9 A. I thought it sounded vague to me that  
10 it would kind of depend on how they wanted to  
11 interpret it. It said "a lawful purpose," and I  
12 don't think it specifies what that is.

13 Q. Well, we know some things are criminal;  
14 correct?

15 Like, entering the church to rob it,  
16 that would be an unlawful purpose, wouldn't it?

17 MS. VELEZ: Objection. Calls for a  
18 legal conclusion.

19 THE WITNESS: It's a polling place.

20 BY MR. MOSLEY:

21 Q. Entering it to rob the people of their  
22 wallets and purses would be a crime, wouldn't

# **EXHIBIT F**

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IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
CIVIL DIVISION

2 THE LEAGUE OF WOMEN VOTERS OF ARKANSAS and ARKANSAS  
3 UNITED,

4                      Plaintiffs,

5 vs. No. 60CV-21-3138

6 JOHN THURSTON, in his official capacity as the Secretary  
of State of Arkansas; and SHARON BROOKS, BILENDA  
7 HARRIS-RITTER, WILLIAM LUTHER, CHARLES ROBERTS, JAMES  
SHARP, and J. HARMON SMITH, in their official capacities  
8 as members of the Arkansas State Board of Election  
Commissioners,

Defendants.

10

11

12 REMOTE DEPOSITION OF BONNIE MILLER  
TAKEN ON BEHALF OF THE DEFENDANTS  
13 ON DECEMBER 27, 2021, BEGINNING AT 1:02 P.M.  
TAKEN VIA ZOOM  
14 REPORTED BY MIKE WASHKOWIAK, CCR

15 APPEARANCES: (All via Zoom)

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On behalf of the DEFENDANTS

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Also present: From the Arkansas Secretary of State's  
Office, Amanda O'Neal and Rachel Kluender

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1 MS. FRENKEL: Objection. First Amendment  
2 privilege. Ms. Miller, you may choose to answer, or you  
3 can maintain the privilege.

4 THE WITNESS: I will maintain that privilege.

5 Q (BY MR. MOSLEY) Okay. How many members --  
6 let's define a few terms. Does the League of Women Voters  
7 have something called members in the state of Arkansas?

8 A Yes, we do.

9 Q How many members do you have in the state of  
10 Arkansas?

11 A We have 323 members.

12 Q How do you define member? What does it take to  
13 become a member?

14 A A member is someone who signs up and pays their  
15 membership dues, and that lasts for 12 months, and then a  
16 member can choose to renew.

17 Q Do you keep demographic information on your  
18 members?

19 A We do not.

20 Q So you couldn't tell me how many members of the  
21 League of Women Voters of Arkansas are African-American,  
22 for instance?

23 A I could not give you an exact number on that,  
24 but I do know from my own personal experience in the  
25 league that we do have African-American members in the

1 throughout the year just so I could make sure that I had a  
2 good understanding of everything that they did in terms of  
3 voter education, et cetera.

4 Q All right, let's talk about voter education.

5 One of the things that is alleged in this lawsuit is as  
6 follows: Among other activities, this is paragraph 13 of  
7 the First Amended Complaint on page 7, "Among other  
8 activities the League educates citizens about voting  
9 rights and the electoral process," I'm going to read the  
10 whole thing so you can hear it, "and facilitates voting  
11 through Get Out the Vote efforts, voter registration  
12 drives, and voter support efforts." Is that an accurate  
13 statement?

14 A Yes, it is.

15 Q How does the league educate citizens about  
16 voting rights? Let's start there.

17 A So we have training every month that we host in  
18 which we talk about how to register voters, voting laws,  
19 election laws. And --

20 Q You do that -- I'm sorry. I'm sorry, Ms.  
21 Miller, go ahead.

22 A Oh, no, go ahead. You can continue.

23 Q Do you do that year-round? Monthly?

24 A Yes.

25 Q Where are the trainings located, throughout the

1           Q     Okay. But you did say that you talk about  
2     election laws?

3           A     Yes.

4           Q     So do you know when the four laws that are being  
5     challenged here went into effect?

6           A     After this last session.

7           Q     Do you do any work at the Arkansas General  
8     Assembly, or did you in this last session?

9           MS. FRENKEL: Objection. First Amendment  
10    privilege. Ms. Miller, you may --

11          MR. MOSLEY: Let me just reask the question.

12          Q     (BY MR. MOSLEY) Were you aware of these laws  
13    immediately after the legislative session ended for 2021?

14          A     Yes.

15          Q     Okay. Did you begin educating in your monthly  
16    trainings on these new laws when you became president in  
17    June of 2021?

18          A     The changes, yes, did become -- yes, we started  
19    trying to incorporate talking about the new laws, but it  
20    is, as a volunteer changing our materials and explaining  
21    it, educating the new laws wasn't something that we were  
22    able to just do overnight, and it is still something that  
23    we are working on.

24          Q     Well, how do you educate people that come to  
25    these trainings on laws, via a PowerPoint presentation?

1           A       Yes, I have a slide deck that I use.

2           Q       Do you have slides in that that include  
3       information about these new laws from the 2021 general  
4       assembly?

5           A       No.

6           Q       Why not?

7           A       Because I am a volunteer for my organization as  
8       well, and I have a full-time job. And we have a lot of  
9       other activities that we are involved in, and changing all  
10      of our materials and updating everything requires time and  
11      effort of volunteers, and it is not something that is easy  
12      to do. I have myself -- I have to educate myself and  
13      understand the changes, and I then have to make changes to  
14      materials and slide decks. A PowerPoint presentation is  
15      just one of many tools that we use. So there's a lot that  
16      we have to do and undertake, and again, as an  
17      all-volunteer organization without any kind of staff  
18      support, it's a lot of work.

19          Q       Do you know how to use PowerPoint, ma'am?

20          A       Yes, I do.

21          Q       Do you know how to create a slide, ma'am?

22          A       Yes, I do.

23          Q       We're talking about four laws, correct?

24          A       We are talking about four laws, yes.

25          Q       Have there been any changes to this PowerPoint

1 MS. FRENKEL: Okay.

2 Q (BY MR. MOSLEY) Ms. Miller, you're telling  
3 people if you're going to vote absentee and have it  
4 dropped off, you're telling these people at these  
5 trainings they're going to have to do it by the Friday  
6 before the election as the law reads today, correct?

7 A We get into some of that, but we have an hour  
8 for the training, and covering our basic how-to for voter  
9 registration does not leave a lot of time to go in depth  
10 on all the changes that came out of this last session with  
11 these four bills.

12 Q Do you -- it was important enough to sue,  
13 though, over these four bills. It should be important  
14 enough for you to educate, don't you think?

15 A We do educate, but again, as an all-volunteer  
16 organization, it is a lot of work and it requires pulling  
17 resources from other areas and time of volunteers.

18 Q You know, look, I'm just trying to figure out  
19 what those -- what you're talking about is what's called a  
20 diversion of resources, and I'm aware of what you're  
21 talking about. I'm trying to ask you what kind of time is  
22 being diverted from other priorities for you to teach  
23 since the last legislative session about these new laws?  
24 Can you be specific?

25 A We have a lot of other priorities as a league.

1 We do a lot of voter registration, and we host other  
2 programs about other issues that are coming up, and this  
3 has been a big change this last year, these four laws, and  
4 there isn't a way to cover, in our eyes, meaningfully  
5 within this hour where we're already covering a lot of  
6 other substantive material all of the changes that came  
7 through with these four laws.

8 Q So because you've just testified there's no way  
9 to meaningfully cover this, I thought you said you are  
10 covering this at least verbally. Did I misunderstand your  
11 testimony?

12 A We do. We do talk about that there were changes  
13 in the laws.

14 Q When you say you talk about there were changes  
15 in the laws, are you specific about what the changes are  
16 during the trainings?

17 A Sometimes. Sometimes we do get into it, and  
18 other times, no.

19 Q Let's say when you became president in June of  
20 2021 and through the summer, would you say your trainings  
21 on average during that period of time talked more about  
22 the proposed changes in the laws and the changes in the  
23 laws than they do, say, in November and December?

24 A Can you repeat the question?

25 Q Yeah. You're talking about diverting resources.

1           Q     Do you know what notes slides are where there's  
2     a slide and then if you print it out you can put notes at  
3     the bottom?

4           A     Yes.

5           Q     Do you have or do your slides have notes at the  
6     bottom for these trainings?

7           A     I honestly don't know. I don't remember. If  
8     they do, I don't use them.

9           Q     Okay. Do any of the slides currently in the  
10    PowerPoint regard any of the four new laws that you're  
11    challenging in this lawsuit?

12          A     I do not believe that we refer to any of the new  
13    laws in the PowerPoint.

14          Q     But your PowerPoint regards, among other things,  
15    how a citizen votes?

16          A     In part, but it is dedicated to -- it is a voter  
17    registration training.

18          Q     So it's just a voter registration training; is  
19    that your testimony?

20          A     We -- it is billed as a voter registration  
21    training. That is the point, to train people on how to  
22    register voters.

23          Q     Your point is not in these trainings to teach  
24    people about new laws; is that correct?

25          A     The point of those meetings is not to teach

1 people about new laws.

2 Q And that's never been the point for League of  
3 Women Voters of Arkansas? You're not out there to teach  
4 about new laws; you're out there to get out the vote and  
5 register people, correct?

6 A Well, if there are new laws that affect voting  
7 and how somebody can vote, then we would share that  
8 information and educate. That's part of our voter  
9 education.

10 Q My question was about these trainings, and I  
11 thought you just said that the trainings regard  
12 instructing people how to register to vote and that was  
13 the point of them. Am I incorrect in your testimony?

14 A These monthly trainings that we were referring  
15 to are voter registration trainings, and in then we also  
16 talk about deadlines and voting, and briefly.

17 Q But the point of them is to get people to  
18 register to vote?

19 A The point of that training, yes, is to train  
20 people on how to register people to vote.

21 Q Other than your book, your manual -- is it  
22 considered a manual or a book? What do you regard it as?

23 A It's a book. It's a sizable publication.

24 Q Who publishes it for you?

25 A We publish it.



1           Have any of the other members of the leadership  
2   team conducted any of these trainings that you have a  
3   PowerPoint for since the end of the legislative session of  
4   2021?

5           A     They may. I mean, they have the slide deck, so  
6   they're free to use it. They're free to train whomever  
7   they want with it, but through our formally scheduled  
8   trainings, I've been the one that's been doing them.

9           Q     Solely just you?

10          A     Yes.

11          Q     Okay. You claim members volunteer outside of  
12   polling places and assist and encourage voters. How do  
13   you volunteer for League of Women Voters to do this?

14          A     Do you mean what is the process or eligibility?

15          Q     Yes, the process and eligibility.

16          A     If someone says that they -- I mean, we have a  
17   list of emails. We send out email to a list. But often  
18   we'll hear from people who are interested in volunteering,  
19   especially around election day and election season.  
20   They'll let us know that they want to help, and this is  
21   one of our opportunities for volunteering. So if somebody  
22   wants to help out or be present outside of a polling  
23   location, that has been available to them in the past.

24          Q     Do you do any background checks on volunteers  
25   who do that kind of work?

1 A No, we don't have those kinds of resources.

2 Q Do you ask them to fill out any application?

3 A No. To be in a public place?

4 Q To serve as your volunteer, ma'am, do you ask  
5 them to fill out any sort of application?

6 A No. To serve in a volunteer capacity, no.

7 Q Do you ask whether or not they're affiliated  
8 with a candidate who is being voted on at the polling  
9 location that they're going to be at volunteering?

10 A We do tell people that there is no  
11 electioneering and that they cannot have any kind of  
12 signage for a candidate or party. We're a strictly  
13 nonpartisan organization.

14 Q Can you name me anybody who provided water  
15 during the last national election as a volunteer for  
16 League of Women Voters of Arkansas at a polling location?

17 MS. FRENKEL: Objection. First Amendment. Ms.  
18 Miller, you may answer to the extent that does not reveal  
19 an individual's membership in the League of Women Voters  
20 of Arkansas.

21 MR. MOSLEY: I'm just going to make a record.  
22 This is independently relevant. It's been put in issue.

23 Q (BY MR. MOSLEY) Go ahead, if you plan on  
24 answering that, Ms. Miller.

25 A I don't know the names of individuals. I know

1 that we've had volunteers who have done that, but I don't  
2 know their names.

3 Q Have you ever participated in Get Out the Vote  
4 or whatever drive you might do during an election within  
5 the 100-foot zone on behalf of League of Women Voters of  
6 Arkansas.

7 A Me personally?

8 Q Yes, ma'am.

9 A No.

10 Q Do you know anyone, anybody's name that has on  
11 behalf of League of Women Voters been inside the 100-foot  
12 zone doing anything?

13 A I don't have the names of those volunteers.

14 Q Is your primary mission as the League of Women  
15 Voters to register voters?

16 A Our mission is to empower voters and defend  
17 democracy. Voter registration is certainly one of our  
18 core areas, but it is not our only area.

19 Q Is one of the facets of your mission to  
20 institute litigation against laws that you disagree with?

21 A I would say that our mission is as stated, but  
22 it is also to increase access to the polls. So if we see  
23 that there are restrictive pieces of legislation that have  
24 come out, then I would say that we do feel it is within  
25 our scope of work and in support of our mission to

1           Q     When was the last time League of Women Voters of  
2     Arkansas sought to or did set up in a 100-foot zone at a  
3     polling location?

4           A     I believe in the last presidential election.

5           Q     What about the local election in Washington  
6     County? Wasn't there a recent local election up there in  
7     the last six months?

8           A     We've had a school board election this year.

9           Q     Wasn't there also runoff for state rep or state  
10    senate recently?

11          A     Those are coming up.

12          Q     There was not one that involved Jim Bob Duggar,  
13    a primary election?

14          A     There was a primary, and then the special  
15    election is in February.

16          Q     Did you or anybody on behalf of League of Women  
17    Voters of Arkansas go to any polling location at any  
18    election that we just mentioned, the school election or  
19    the one involving Jim Bob Duggar, and set up in the  
20    100-foot zone at any polling location?

21          A     No.

22          Q     Where did League of Women Voters of Arkansas to  
23    your knowledge set up within 100 feet of the polling  
24    location during the national election in 2020?

25          A     I believe that occurred in Pulaski County.

1 Q Do you do what the polling location was?

2 A I do not.

3 Q Were there any issues that were brought to your  
4 attention from that day of elections?

5 A Not that were brought to me.

6 Q Do you know whether or not League of Women  
7 Voters of Arkansas in that instance that you mentioned in  
8 Pulaski County was handing out water or snacks to voters?

9 A I believe what I heard was that they had water.

10 Q Who paid for it?

11 A It might have been the volunteer. I can't  
12 really say.

13 Q You couldn't say, thank you. A hundred feet is  
14 not very far it, is it?

15 A I don't suppose. I'm not sure what the -- how  
16 you would -- it's relative, I guess.

17 Q Could you throw a rock 100 feet?

18 A I don't know.

19 Q Could you speak or yell so that someone 100 feet  
20 away from you could hear you?

21 A Probably.

22 Q Why would you need to be in the 100-foot zone,  
23 then?

24 A Well, there would be a lot of reasons to be in  
25 the 100-foot zone. A lot of people accompany other

1 individuals who vote. I've seen myself parents accompany  
2 their newly-registered 18-year-old kids; they go with  
3 them. People who need assistance. So there's a physical  
4 aspect of physically supporting someone being in line that  
5 would necessitate someone else being within a hundred feet  
6 if they weren't the person in line to vote. But also we  
7 want to show our support for voting and for the franchise,  
8 and that is one way that we express that is by being  
9 present and visible.

10 Q You can be present and visible, though, right up  
11 to the sidewalk or whatever means of ingress and egress  
12 that a person is accessing a polling location 100 feet  
13 away and still be effective in championing the franchise,  
14 don't you think?

15 A Well, no, I mean, we disagree. We want to be --  
16 that's part of our complaint is that we want to be within  
17 100 feet to be able to provide support to individuals who  
18 need it, and also to show our own support of voting.

19 Q Can you name a single voter you've supported as  
20 you allege in the Complaint in the last national election  
21 on behalf of League of Women Voters? When I say "you," I  
22 mean League of Women Voters.

23 A I mean we wouldn't track names of people that we  
24 helped.

25 Q You've read that particular one Act 728?

# EXHIBIT G

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1 IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

2 THE LEAGUE OF WOMEN VOTERS OF ARKANSAS  
3 AND ARKANSAS UNITED,

4 Plaintiffs

5

6 vs. CASE NO. 60CV-21-3138

7

8 JOHN THURSTON, in his official capacity  
9 as the Secretary of State of Arkansas;  
10 and SHARON BROOKS, BILENDA HARRIS-RITTER,  
11 WILLIAM LUTHER, CHARLES ROBERTS, JAMES SHARP,  
12 and J. HARMON SMITH, in their official capacities  
13 as members of the Arkansas State Board of  
14 Election Commissioners,

15 Defendants.

16

17 VIDEO CONFERENCE DEPOSITION OF LESLIE MIREYA REITH  
18 TAKEN ON BEHALF OF THE DEFENDANTS  
19 ON DECEMBER 16, 2021, BEGINNING AT 8:02 A.M.  
20 ALL PARTIES APPEARING REMOTELY  
21 REPORTED BY SHANA LEDING, CCR

22

23 APPEARANCES

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5

6 Also Present: Rachel Kluender, Amanda O'Neal  
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1 A In my Springdale office.

2 Q And so you live in Arkansas; is that correct?

3 A I live in Fayetteville, Arkansas.

4 Q Okay. What is your role with the entity known as Arkansas  
5 United?

6 A I am the founder and Executive Director of Arkansas  
7 United.

8 Q And Arkansas United is a plaintiff suing the Secretary of  
9 the State and the State Board of Election Commissioners in this  
10 lawsuit regarding four laws passed at the 2021 General Assembly  
11 of Arkansas; is that your understanding?

12 A Yes, it is.

13 Q Are you familiar with those laws?

14 A I am.

15 Q Arkansas United, according to the amended complaint,  
16 engages in activities to educate its members and supporters so  
17 that they are equipped, that is their members and supporters  
18 are equipped with the information and resources to successfully  
19 cast ballots that are counted; is that correct?

20 A That is correct.

21 Q Could you describe those activities, meaning the  
22 activities to educate your members and supporters so that they  
23 are equipped with the information and resources to successfully  
24 cast their ballots? What are those activities that Arkansas  
25 United engages in?

1 A Those activities include significant translation into  
2 Spanish and Marshallese about the process for voting and  
3 deadlines, key deadlines and any changes that might have  
4 occurred since the previous election. We generally focus our  
5 work around the general elections that happen every other year  
6 and work alongside election commissions to offer opportunities  
7 for our members to practice what it is when they go to vote and  
8 do informational videos that we predominantly share in social  
9 media or ethnic media that give visibility to what that process  
10 looks like. So that we can hopefully debunk any myths and  
11 build confidence in the community in voting. Once the voter  
12 registration deadline is reached, and we do support  
13 registration drives alongside partners and institutions across  
14 the states, but once that voter registration deadline is  
15 reached, we then transition into what we call "Get Out the  
16 Vote," in which predominantly through phone calls and door  
17 knocking, at least pre-COVID, we would approach registered  
18 voters to make sure that they knew about relevant deadlines and  
19 answer any questions about the process.

20 And then subsequent to the elections, we do informational  
21 videos and interviews with ethnic media so that the results are  
22 understood. And if there are any subsequent elections, that  
23 the community knows about those opportunities and deadlines as  
24 well.

25 Q What community do you mean, the Latinx Hispanic community?

1 A Correct, sir, our members are predominantly Hispanic--  
2 predominantly Hispanic with our -- we collaborate the last  
3 election cycles with Marshallese groups that also helps  
4 disseminate comparable information in Marshallese.

5 Q Do you know if you have any African-American members?

6 A We do, sir.

7 Q Do you know how many?

8 A At this time Arkansas United does not track the  
9 demographics of our members.

10 Q Okay. Do you know how many members you have total?

11 A We are in the process of cleaning our database. As of  
12 last year, we had tracked 800 entries. So members, dues-paying  
13 members in our client relation management tool in a recent  
14 cleanup of our system it's now closer to over 600 because we  
15 found some duplicate entries.

16 Q You knew where I was going there. You knew I had seen  
17 those numbers?

18 A Correct, sir.

19 Q Yeah. Phone banking. I know personally from the other  
20 case, phone banking is a big thing that you guys do during  
21 elections; is that correct?

22 A That is correct, sir.

23 Q Does phone banking occur -- what is your window for  
24 beginning phone banking before a federal election?

25 A The earliest -- in the ten years that we've done this, the

1 A That is correct, sir.

2 Q And if one of your members, or really anybody the way I  
3 understand. Let me go back for just a second.

4 Do members pay dues? I don't care what they are, I'm just  
5 curious if they pay dues.

6 A If they are in our client relation management system, that  
7 meant they paid dues; that is correct.

8 Q Okay. But that will not prohibit Arkansas United from  
9 providing services to even nonmembers; is that what I  
10 understood?

11 A That is correct, sir.

12 Q And one of the things you provide is transportation  
13 services you just said; correct?

14 A Correct.

15 Q And so if anyone called Arkansas United and needed  
16 transportation to go get a photo identification for free at  
17 either the County clerk's office or the DMV, you would provide  
18 that through Arkansas United; is that correct?

19 A If we had the capacity to do so, sir. The reality is we  
20 don't receive grants for that specific type of work. At no  
21 point in Arkansas United's history have we received grants  
22 specifically to offer services tied to voter identifications.  
23 So either if we can figure out a way to allocate staff time or  
24 to coordinate volunteers, which also take staff time, we will  
25 make an effort to do so. But usually something like that

1 requires the diversion of resources from grants that were  
2 actually funded to implement.

3 Q Well, you remember me asking you this question at your  
4 last deposition; don't you?

5 A I do, sir.

6 Q And you remember you answered it, yes, you would do such a  
7 thing and you didn't provide the qualification that you just  
8 provided; would you agree with that?

9 A Sir, it's been several months, I would need to see a  
10 transcript, but I know that what I just shared is the case for  
11 the reality of our staff and our volunteers.

12 Q When was Arkansas United last asked by any member or  
13 member of the public to provide transportation services for  
14 anything?

15 A We were definitely asked to service, transportation  
16 services in the last general election. Although, we tried to  
17 explore as many alternatives as possible due to COVID to not  
18 unnecessarily expose staff and volunteers, but I would say  
19 probably more recently with the COVID pandemic we did have  
20 staff and volunteers accompany members to apply for different  
21 services of support from the state or federal government tied  
22 to COVID. Many members of our community needed us to pick them  
23 up from their homes and actually drive them and accompany them  
24 to appointments where our navigators served as interpreters in  
25 those incidences.

1 services to some; is that correct?

2 A Correct. If it's not something that again, we can manage  
3 then those are the steps that she would've taken.

4 Q Do you recall me asking you that you engage in education  
5 services and you answered that question -- you said, yes, you  
6 do, Arkansas United engages in educational services for its  
7 members. You said more than that, but is that a fair  
8 summation, yes, you do provide educational services?

9 A Yes, sir.

10 Q And does that include informing your members about  
11 election laws in the State of Arkansas?

12 A It does, sir.

13 Q Now, election laws change sometimes every two years after  
14 every General assembly; correct?

15 A That's correct, sir.

16 Q And that's something you are equipped to manage when those  
17 laws change, you change your educational materials; correct?

18 A Correct.

19 Q That is something Arkansas United already does?

20 A It does, sir. I will say though we never received  
21 specific grants to be able to focus especially on awareness  
22 building for changed laws and so, again, it is something that  
23 in the realm of our bigger mission, we choose to divert  
24 resources to make sure that adequate education services are  
25 given to our members in our community.

1 Q So, educational services is not one thing that you receive  
2 grants for; is that correct?

3 A Not specifically, sir. We divert resources from general  
4 support to be able to do it, but our civic engagement grants  
5 are just for phone banking and door knocking.

6 Q And that's mainly what you do phone banking and door  
7 knocking; correct?

8 A Correct, sir. That said, doing this for ten years, we  
9 have learned that our community has ample questions. And  
10 hence, we have chosen to divert resources to make sure  
11 educational materials are received and that we are putting  
12 staff time toward -- towards educational efforts. Sometimes  
13 talking to ethnic media, PSA campaigns, things like this.

14 Q This is something Arkansas United was already doing before  
15 these four laws were enacted; correct?

16 A We were diverting resources and justifying it under  
17 general support to be able to do that, correct.

18 Q Before the 2020 General assembly; correct? You were  
19 already doing that?

20 A Correct, sir.

21 Q Do you make your members or anyone aware that under the  
22 Arkansas Constitution, counties provide voter IDs for free,  
23 photo identification for free?

24 A According to my recollection I don't think we have  
25 specifically lifted that up, sir.



1 Q So, the purpose of your organization is not education?

2 Because what I understood you to say is to do education you're

3 diverting resources. Can you tell me if the purpose of your

4 organization includes education or not?

5 A Sir, our mission is to empower our Arkansas immigrants to

6 be agents of change and we do so through advocacies, civic

7 engagements and services. Education is a tactic that we use to

8 support all three of those elements of our mission, but our

9 mission in and of itself is not solely to educate. If

10 anything, we say we educate to activate our community.

11 Q So, you just said that education is a tactic --

12 A Correct.

13 Q -- to serve your purposes; is that correct?

14 A To serve our mission, correct, sir. We are mission driven

15 nonprofit.

16 Q And that's been the case for your entire ten years there,

17 is that education is used as a tactic to serve your mission;

18 correct?

19 A Correct, sir.

20 Q And that includes for the entire ten years you've been

21 there, education what the laws are to vote?

22 A That's correct, sir.

23 Q Have you done any education to your memories about the

24 laws that were passed in 2020 that Arkansas United is

25 challenging in this lawsuit -- let me ask you this different --

1 let me stop for just a second.

2 What law of the four laws that are at issue in this  
3 lawsuit is Arkansas United challenging or are you challenging  
4 them all?

5 A We are challenging all of them, sir.

6 Q Okay. Let's say you lose this case. You know we've got  
7 primary elections in May, have you already started educating  
8 people about these four laws?

9 A So, if I could offer, sir, in the spring when these acts  
10 or these bills were debated, we did do education with our  
11 community around the bills and invite feedback and any  
12 expression of concern from our members and partners. Since  
13 that time, since these bills became law, we have not done any  
14 education as of yet. We are currently as a staff in the  
15 process right now of both doing our budget and work plan for  
16 the year ahead. And I will say as of this moment, we do not  
17 have any confirmed funding for civic engagements, including our  
18 normal phone banking and door knocking activities and so part  
19 of our work plan process will be a prioritization process to  
20 make sure that first and foremost we fulfill on grants that we  
21 are given and to do scenario planning for the civic engagement  
22 work that would probably includes, yes, education, civic  
23 education.

24 Q Probably?

25 A Sir, if we can justify resources, we always in the

1 interest of our members will find a way, but again, it's going  
2 to be part of the scenario planning.

3 Q But you've already educated your members about the bills  
4 during the legislative session; correct?

5 A Sir, we educated our community about many bills. I will  
6 say where we did deeper education and feel deeper confidence in  
7 our members awareness is for the bills that we were successful  
8 in passing. We passed four bills tied for our DACA students  
9 and we know that is what was probably the most prevalent. We  
10 know that we will have to do deeper education to really bring  
11 comparable understanding to these four laws, the four acts.

12 Q Let me go back and ask you. I thought you said during the  
13 legislative session you made your members aware of these four  
14 laws. I'm not asking about anything else, these four laws; did  
15 you or did you not do that?

16 A Sir, what we did was we disseminated information. What we  
17 have come to learn from ten years of doing this work is  
18 dissemination of information does not always mean  
19 comprehension. And so we know that we have to do deeper  
20 touches with our community. Again, that's the rule our  
21 community organizers and navigators to do one-on-one or small  
22 group interactions to make sure that awareness is built.

23 Q That's what you already do?

24 A That is our process by which we turn information  
25 dissemination into what we would call education of our

1 A That's correct, sir.

2 Q And if you do, then education is a tactic that you use for  
3 civic engagement and you will use it again; correct?

4 A If we can afford to do so, correct, sir.

5 Q And these laws -- none of these laws are 50 pages long.

6 They are all fairly succinct, wouldn't you agree?

7 A I agree, sir. But they are complicated in what they  
8 entail and it would require more than just direct translation  
9 or interpretation to enable comprehension.

10 Q Okay. So, ask me -- tell me this: Which of the four  
11 laws -- when you just said that they are complicated, which  
12 four laws or all of them are you referring to?

13 A I'm referring to all four, sir.

14 Q Okay. Let's go through them then.

15 In your opinion what is complicated about Act 736 for  
16 educational purposes?

17 A For us, sir, one, our community in general probably had  
18 never -- we've never had a conversation and probably no one has  
19 had a conversation with them about the idea of signature match.  
20 And so the idea that now it is -- ties back singularly to a  
21 single data point, which is the voter registration form, is  
22 something that we would consider a complex issue for our  
23 community. And we already have name matching issues as related  
24 to voting for our community. Because our community are  
25 especially Hispanics, but we've also found this with the Asian

1 diasporas. Their names on their birth certificates from their  
2 home countries, many times based on the culture of those  
3 countries, use, for example, use four names, five names. Once  
4 they go through the immigration process in this country, they  
5 many times will choose to reduce names. And for folks -- we  
6 now have and we have been proud to boast voters who have been  
7 voting for 20 years, 30 years in Arkansas, they may not recall  
8 that voter registration, that name that they signed as back  
9 when they registered to vote. And our concern is with again,  
10 any process that is decentralized, we find that not everyone is  
11 equally trained on the particularities around the names for our  
12 communities. And so that means we have to train our members to  
13 understand that somebody who receives their absentee ballot  
14 application may not have that training and so they need to be  
15 able to be prepared to answer questions and to assert their  
16 rights in being able to submit in the case of not an exact  
17 match in signature.

18 Q And that's what you understand the law requires is an  
19 exact match; correct?

20 A Correct, sir.

21 Q All right. Let me ask you this. You said so far you've  
22 never had to do any education on what you call the match of  
23 signatures; is that correct?

24 A Correct, sir.

25 Q And that is because you understand that there is more than

1           You keep saying additional step. What additional step do  
2   you mean?

3   A     For us now it's the exact signature match to the voter  
4   registration form, that specific, specififness would be  
5   something that would give us concern. Because again, name  
6   matching, we get calls every election cycle to our hotline  
7   about somebody being questioned because of not having an exact  
8   name match and that's because different agencies have recorded  
9   differently the ethnic names of our community. And so we would  
10   just be concerned that now additional attention is going to be  
11   put to the signature because of this law; and so, that would  
12   require awareness building within our members, that in addition  
13   to the name match on the ID, to be aware that if they are  
14   choosing the absentee ballot that there's going to be special  
15   attention on the signature match. And if they have any reason  
16   to believe that their signature has changed, which it  
17   frequently does as part of the immigration life cycles for many  
18   of our members, that they're going to need to do that  
19   additional due diligence.

20   Q     Did you know that your members can update their signatures  
21   on their voter registration application?

22   A     We know that they can update their voter registration for  
23   their applications. And that's something we do awareness  
24   around every election cycle if they have a name change or  
25   address change to update that.

1 Q Okay. So, with respect to Act 973, the materials that you  
2 already have that you disseminated regarding drop-offs of  
3 absentee ballots, you just need to go in there and make sure  
4 that it says Friday before the election instead of Monday  
5 before the elections; is that correct?

6 A Sir, we would need to review. I would have to look up  
7 those materials and see what additional additions. We  
8 anticipate there may be other types of questions, but amongst  
9 with, yes, we would make the amended dates change.

10 Q And that would be in a Word document; correct?

11 A Correct, sir. Or Canva. We use Canva quite a bit.

12 Q Does Canva have a delete function?

13 A Correct, sir.

14 Q Can you use the keyboard with Canva or is that a word  
15 processing application?

16 A It is, sir. But as with anything for due diligence for  
17 any other changes, and then to make sure that the materials are  
18 culturally appropriate and explained, we would do a review, a  
19 thorough review, of every material before we printed or  
20 disseminated it or discussed it with our community.

21 Q Okay. Well, in a case of Act 973 you would have to delete  
22 one word and then type in another word; correct?

23 A Amongst potentially other edits we would need to make,  
24 sir. I would need to review those materials.

25 Q Other edits that don't relate to the laws you're

1 and as I recall, the testimony was that you guys did the  
2 definitions at Arkansas United on that flyer; am I wrong?

3 A We drafted the first draft, sir, but we did share it with  
4 national partners and others to make sure we were correct in  
5 our definitions.

6 Q What national partners?

7 A I know that we engage Crossroad Campaigns which was our  
8 primary technical assistance provider in the last two or three  
9 election cycles. They are provided to us via our donors the  
10 Four Freedoms Fund.

11 Q Who are the others you mean that you checked those  
12 definitions with? You said you partners, International  
13 partners and others. Who were the others you mean?

14 A I know in past election cycles we've also asked attorneys,  
15 multi lingual attorneys or other election experts for their  
16 opinions. I know that several of my staff, even though they  
17 weren't the ones that directly worked on the documents, they  
18 were attorneys in their home country in Mexico or El Salvador,  
19 we had them review the documents. We tried to make sure there  
20 were multiple steps taken.

21 Q Okay. Let's talk about Act 249?

22 A Yes, sir.

23 Q Before, a person could -- if they didn't have a compliant  
24 photo identification they could fill out an affidavit and get a  
25 provisional ballot. Is that your understanding of what the



1 process was before the 2020 general election -- 2021 general  
2 election?

3 A That's correct, sir.

4 Q And now you understand that that affidavit is not going to  
5 be available to obtain a provisional ballot in the next general  
6 election; correct?

7 A Correct, sir.

8 Q And so how many of your members use the affidavit  
9 provision to cast a provisional ballot in the 2020 general  
10 election?

11 A Sir, I don't have that number offhand because not all of  
12 our members will communicate with us after they voted what  
13 process they used. I can attest to that over the decade, we  
14 have had members tell us that they have used that provisional  
15 ballot option, especially because of the name match issue as  
16 related to their ID. But at this time I do not recollect a  
17 specific case in the 2020 election. But that doesn't mean it  
18 didn't happen. We don't actually educate or ask our members to  
19 communicate with us after voting.

20 Q So, you are saying that at some point in the last ten  
21 years, going all the way back ten years, somebody has used the  
22 affidavit that's been a member of your group?

23 A Yes, sir, we definitely have. Yes.

24 Q So, again, you have training materials that reflect the  
25 law, that have been translated into Spanish; correct?

1 A Correct, sir.

2 Q So, in order to change that, an affidavit is no longer  
3 available, you go into the word processing document and delete  
4 that information; correct?

5 A Yes, sir. But we would also do supplemental education.  
6 We would probably want to bring attention because that is  
7 something we educate our community on. Again, early years  
8 especially had several issues with the name match so it was  
9 probably within our voter education materials. And we would  
10 definitely need to do subsequent education through our  
11 organizers with our members and others to make sure the  
12 community absorbs that change.

13 Q So, for the last ten years, you've been doing education  
14 about the availability -- let me finish -- about the  
15 availability of the affidavit to cast a provisional ballot; is  
16 that what you're saying?

17 A I am, sir.

18 Q And you are certain of that?

19 A Yeah, I am.

20 Q And it's in the materials that you have produced to  
21 disseminate amongst members; correct?

22 A Historic materials, yes, sir.

23 Q So, when did Arkansas United begin as an entity, when was  
24 the year that it began?

25 A We were incorporated December 2011. And we started actual

1 programmatic activity with grants January 1, 2012. The first  
2 election we engaged in was 2012.

3 Q So, when we're talking about you were educating about  
4 absentee or about affidavits to do provisional ballots, we're  
5 going back to December or January of 2012; correct?

6 A Correct, sir.

7 Q Okay. Act 728, I haven't heard you testify that one of  
8 the things you do is hand out water or snacks to people in line  
9 at voting locations. Is that something that Arkansas United  
10 does?

11 A It is something that we desire the option to have. I know  
12 that in my previous testimony I've spoken about our party at  
13 the polls, the support we give the two Saturdays before of  
14 early voting. And that you've heard me testify about the  
15 materials that we give. What we also give at that time are  
16 water and sometimes snacks.

17 Q But that's outside the -- go ahead.

18 A The people voting.

19 Q That's outside the 100-foot zone; right?

20 A This last election, sir. But I will say one of the  
21 reasons we did not engage in specific line warming in the  
22 100-foot line was because we're part of coalitions with other  
23 civic engagement partners who we knew were offering those  
24 services, like the Urban League and Indivisible. In future  
25 elections, if they are not offering that type of service, and

1 Q And that speculation. We don't know yet what kind of  
2 education you are going to need to do; correct?

3 You are speculating because you don't know yet?

4 A Again, we're drawing on historical experience, sir, yes,  
5 you're correct, that is the best I can do is draw on  
6 historically experience.

7 Q And speculate?

8 A If -- educated speculate, sir.

9 Q Okay. Do you plan on educating your members that they  
10 have multiple weeks to obtain an absentee ballot and drop it  
11 off before the general election?

12 A Sir, we did do that last cycle. Again, the best we would  
13 do -- we don't have confirmed civic education funding. But we  
14 are prepared for that scenario this cycle. We are preparing --

15 Q So, to tell your members how early they can receive an  
16 absentee ballot; correct?

17 A Correct, sir. Although, I will say some of the members we  
18 worry most about are those who are -- for example, are truck  
19 drivers or others who don't know until much closer to election  
20 day whether they are actually going to be physically present or  
21 not. And we do know that our members tend to make their voting  
22 plans that weekend before election day.

23 Q Right. So, people -- people's personal habits make them  
24 not obtain an absentee ballot at least 45 days before the  
25 election sometimes. Is that what you're getting at?

1 A I am, sir. Or that their work circumstances that they  
2 thought they would be present and vote on election day or the  
3 Saturday before election as always, but we do find that our --  
4 many of our immigrant workers, members, are folks that are  
5 susceptible to quick work schedule changes.

6 Q So, now it's work schedule changes, it's not waiting to  
7 the last minute?

8 A It's both, sir.

9 Q Okay. How will the laws you're challenging here make  
10 voting more difficult for members or supporters of Arkansas  
11 United specifically as opposed to anyone?

12 A If I can go Act by Act.

13 Q Sure.

14 A By Act 736, again we feel our immigrants, are Hispanics  
15 are especially vulnerable because of the issues we already have  
16 with name matching, right. And that's just an issue we  
17 confront across processes federal and states and have  
18 historically experience. Also, having to submit a photocopy of  
19 the identification at that time is a challenge for our  
20 community members. Many of them don't have access in their  
21 workplace to a photocopier, that's not something they have at  
22 home and that just requires an additional education and  
23 service. In regards to Act --

24 Q If they --

25 A If I may finish, sir. Since, Act 973 with absentee

1 ballots the Friday before, as I shared, we know from ten years  
2 of working on this with our community they make a lot of their  
3 plans at -- towards the end, the Saturday before, and we just  
4 feel that there's going to be a lot of education that needs to  
5 be done, that they can't wait to submit those absentee ballots  
6 in person that Monday before they are going to have to do it  
7 that Friday or previously. And there may be additional  
8 transportation and support that our community will need, so,  
9 equally challenging for them and challenging for us.

10 As I shared on Act 249 with affidavits, our immigrants, we  
11 know historically we have had folks take advantage of the  
12 provisional ballot. Again, it's been predominantly a name  
13 matching issues and now our membership is going to completely  
14 lose that opportunity. And for those that have been accustomed  
15 and used to it, it's just going to take deep education that  
16 risks potential distant franchisement of our members.

17 And then finally Act 728, again as I shared there, we  
18 would just be concerned on the -- we want the option we -- we  
19 feel we can't anticipate future long lines, and would not want  
20 any of our voters to be diverted from voting because of hot  
21 conditions or needing water or some basics snacks to be able to  
22 do so. And we relied on partners -- those partners may not  
23 have the ability or may not exist in subsequent election  
24 cycles. And then we're also concerned like I said about the  
25 level of education it's going to take and that the level of

1 the Arkansas Constitution, so I guess I'm asking you how do you  
2 define expression?

3 A In that sense for us, our concerned is overall with the  
4 law, that it creates a sense of -- would create a sense of  
5 unwelcoming or that our communities are not supported around  
6 the voting process. Any limitation, these acts around water  
7 and snacks are all things assistors and interpretation are all  
8 things that have been critical in terms of our immigrant  
9 community, our members, feeling welcomed at the poll, taking  
10 away those concerned that they would be feeling unwelcomed and  
11 may be discouraged and disenfranchised in voting.

12 Q So, let me -- maybe. Let me ask a more specific question,  
13 I'm not sure I got an answer.

14 You would agree with me 728 does not use the word  
15 "express" or "expression" in it?

16 A Agreed.

17 Q And you will agree with me 728 does not use the word  
18 "speak" or "speech" in it; correct?

19 A Agreed.

20 Q You know there's been some elections -- and I know there's  
21 been a Northwest Arkansas election since the enactment of these  
22 acts; did you know that?

23 A Yes, sir.

24 Q After the acts were passed, did anybody with Arkansas  
25 United before -- what was the most recent local election in

1 Q And you've had plenty of time since that time to do a  
2 FaceBook post advising there are four new election laws;  
3 correct?

4 A Sir, it depends on your definition of time.

5 Q This is not -- go ahead.

6 A We push out multiple FaceBook posts a week on various  
7 topics. We have to be selective. There is a thing called  
8 inundating the community with too much information. So, one of  
9 the things that we try to do is give very timely information,  
10 sir. We haven't touched on elections yet because there have  
11 been so much happening in COVID. And then related to the four  
12 laws that we did pass, time sensitive laws that would enable  
13 our workers to engage in the workforce in a more immediate way.  
14 We have been so stretched -- that goes back to what I was  
15 saying -- that's why all we had was a simple FaceBook post this  
16 December. We are called on to do so much more than what we  
17 have capacity to do as staff, or volunteers, or to coordinate  
18 volunteers for. It's one of the reasons, one of my biggest  
19 things, as executive director is the grant management to try  
20 and make this manageable for our communities.

21 Q You asked or reminded members in a FaceBook post or a  
22 What's App to pay their dues since the end of the legislative  
23 session in 2021?

24 A We had a state convention in November, sir, and we did do  
25 several pushes to renew or to become a member, that is correct.



1 have anything.

2 MR. MOSLEY: I'm sorry. Go ahead. Back on the  
3 record. Go ahead.

4 EXAMINATION

5 BY MS. FRENKEL:

6 Q Ms. Reith, just one quick question for you. What is  
7 communicated by providing water and snacks to the voters while  
8 they are in line?

9 MR. MOSLEY: Objection to form, lack of  
10 foundation.

11 Please, answer Ms. Reith.

12 A That the democratic process is open and welcoming and that  
13 every voter is going to be respected and enabled and supported  
14 to be part of the democratic process.

15 MS. FRENKEL: Excellent, that's all I have for  
16 you. Thank you.

17 EXAMINATION

18 BY MR. MOSLEY:

19 Q Ms. Reith, you bring up an interesting point. How is that  
20 communicated by a bottle of water? Does it say it on the  
21 bottle of water that you are giving people? Wait a minute  
22 you're not giving people water.

23 Does it say on the bottle of water that other people are  
24 giving people that this is --

25 MR. MOSLEY: I want to finish my question,

1 Ms. Frenkel. I'll give you chance to make your objection.

2 Q (BY MR. MOSLEY) Does the bottle of water have this  
3 message that you just testified to about it, about on it that  
4 you know of?

5 MS. FRENKEL: Objection. Misstates testimony.

6 A So, Mr. Mosley, just off -- we do give bottled waters.  
7 But again, we're outside the 100-foot limit, at least in this  
8 last election. We don't know what will have to do in  
9 subsequent. And I can actually say from a cultural perspective  
10 it means everything to our community. Hospitality is hugely  
11 important and going out of your way to make people feel  
12 welcomed. We, at our office, for example, if you come into our  
13 immigrant resource centers you are going to see bottled waters,  
14 you are going to see snacks, these are all things -- we're  
15 going to have toys for the kids because they come in with their  
16 whole families. We are going to do everything possible to make  
17 that extension and just -- when you see long lines, people  
18 sweating, uncomfortable, people, you know, may be saying things  
19 at them, a bottled water, a snack makes all the difference. It  
20 means you're welcomed, you're encouraged to stay, your vote  
21 matters. And with communities like ours, where many times  
22 they're first-time voters, that just -- that symbol is  
23 everything to them.

24 Q You were giving out bottles of water at the 2020 general  
25 election outside the 100-foot zone?

# EXHIBIT H

RETRIEVED FROM DEMOCRACYDOCKET.COM

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
FIFTH DIVISION**

**THE LEAGUE OF WOMEN VOTERS  
OF ARKANSAS and ARKANSAS UNITED et al.**

**PLAINTIFFS**

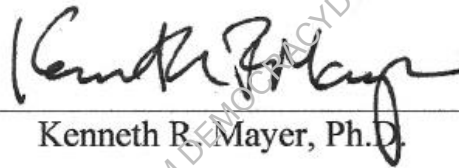
**v.**

**CASE NO. 60CV-21-3138**

**JOHN THURSTON, in his official capacity  
as the Secretary of State of Arkansas;  
and SHARON BROOKS, BILENDA  
HARRIS-RITTER, WILLIAM LUTHER,  
CHARLES ROBERTS, JAMES SHARP, and  
J. HARMON SMITH, in their official capacities  
as members of the Arkansas State Board of  
Election Commissioners,**

**DEFENDANTS**

**Report of Dr. Kenneth R. Mayer**

  
Kenneth R. Mayer, Ph.D.

November 12, 2021

Date

## I. Introduction and Summary of Conclusions

I have been asked by Plaintiffs in this lawsuit to offer an opinion about the effects of changes to Arkansas voting laws enacted after the 2020 general election. The changes I analyze in this report are (1) removal of the affidavit exception to the state's voter ID law which results in all voters being required to present a qualifying photo ID in order to vote, including by presenting or providing a copy of required photo ID along with any returned absentee ballot;<sup>1</sup> (2) moving up the deadline for the in-person return of a completed absentee ballots from the day before Election Day to the Friday before Election Day;<sup>2</sup> (3) requiring that a voter's signature on an absentee ballot application match the voter's signature on the voter's registration form;<sup>3</sup> and (4) prohibiting anyone but voters, or others there "for lawful purposes," within 100 feet of a polling place.<sup>4</sup> Collectively, I refer to these four changes in law as the "Challenged Provisions."

First, I conclude that the Challenged Provisions impose direct and indirect costs on voters and force voters to overcome specific burdens in order to cast a ballot in future elections. The changes will be confusing to voters, eliminate safety valves that had allowed voters who either do not possess a qualifying ID or forget to bring a qualifying ID to the polling place cast a ballot, and create new burdens on election officials (as well as opportunities for discretion to reject ballots for subjective and possibly discriminatory reasons).

Second, I conclude that the Challenged Provisions do nothing to enhance the security of elections, enhance the efficiency of election administration. In the language of public administration, the Challenged Provisions are deadweight, creating administrative burdens that do nothing but create new barriers for voters: additional deadlines, new requirements for absentee ballot applications and submission, additional risks of inconsistent administrative discretion, a higher risk of ballot rejection, elimination of safe harbors that allowed otherwise eligible voters to cast a ballot. Nothing in these new requirements makes any substantive contributions to the integrity of the electoral process.

I am being compensated at a rate of \$450 per hour for my services in this matter. This is my regular compensation rate for conducting analysis for expert testimony, research, and related work. No part of my compensation is dependent upon the results of my analysis, report, or conclusions.

## II. Qualifications and Expertise

I have a Ph.D. in political science from Yale University, where my graduate training included courses in econometrics and statistics. My undergraduate degree is from the University of California, San Diego, where I majored in political science and minored in applied mathematics. I have been on the faculty of the political science department at the University of Wisconsin-Madison since August 1989. My curriculum vitae is attached to this report as Appendix A.

All publications that I have authored and published in the past ten years appear in my curriculum vitae, attached to this report as appendix A. Those publications include the following peer-reviewed journals: *Journal of Politics*, *American Journal of Political Science*, *Election Law Journal*, *Legislative Studies Quarterly*, *Presidential Studies Quarterly*, *American Politics Research*, *Congress and the Presidency*, *Public Administration Review*, *Political Research Quarterly*, and *PS: Political Science and Politics*. I have also published in law reviews, including the *Richmond Law Review*, the *UCLA Pacific Basin Law Journal*, and the *University of Utah Law Review*. My work on campaign finance has been published

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<sup>1</sup> Act 249, Arkansas Constitution, Amendment 51 § 13(b)(4)(A)(i)(a)-(c)).

<sup>2</sup> Act 973, Arkansas Code § 7-5-404(a)(3)(A) and § 7-5-411(a)(2) and (3).

<sup>3</sup> Act 736, Arkansas Code § 7-5-404(a)(1)(A).

<sup>4</sup> Act 728, Arkansas Code § 7-1-103(a)(23).

in *Legislative Studies Quarterly*, *Regulation*, *PS: Political Science and Politics*, *Richmond Law Review*, the *Democratic Audit of Australia*, and in an edited volume on electoral competitiveness published by the Brookings Institution Press. My research on campaign finance has been cited by the U.S. Government Accountability Office, and by legislative research offices in Connecticut and Wisconsin.

My work on election administration has been published in the *Election Law Journal*, *American Journal of Political Science*, *Public Administration Review*, *Political Research Quarterly*, and *American Politics Research*. I was part of a research group retained by the Wisconsin Government Accountability Board to review their compliance with federal mandates and reporting systems under the Help America Vote Act, and to survey local election officials throughout the state. I serve on the Steering Committee of the Wisconsin Elections Research Center, a unit within the UW-Madison College of Letters and Science. In 2012, I was retained by the United States Department of Justice to analyze data and methods regarding Florida's efforts to identify and remove claimed ineligible noncitizens from the statewide file of registered voters.

In the past nine years, I have testified as an expert witness in trial or deposition or submitted a report in the following cases:

Federal: *League of Women Voters of Florida, Inc., et al. v. Lee, et al.*, Case No. 4:21-cv-00186-MW-MAF (N.D. Fla.); *Fair Fight Inc., et al. v. True the Vote, Inc., et al.*, Case No. 2:20-CV-00302-SCJ (N.D. Ga), election administration (2021); *The Andrew Goodman Foundation v. Bostelmann*, No. 19-cv-955 (W.D. Wis. 2020); *Majority Forward and Gamliel Warren Turner, Sr. v. Ben Hill County Board of Elections, et al.*, No. 1:20-CV-00266-LAG (M.D. Ga), election administration (2020); *Pearson et al. v. Kemp et al.*, No. 1:20-cv-4809-TCB (N.D. Ga), election administration (2020); *The New Georgia Project et al. v. Raffensperger et al.* No. 1:20-CV-01986-EL0052 (N.D. Ga.), absentee ballots (2020); *Fair Fight Action v. Raffensperger*, No. 1:18-cv-05391-SCJ (N.D. Ga. 2019); *Kumar v. Frisco Independent School District*, No. 4:19-cv-00284 (E.D. Tex. 2019); *Vaughan v. Lewisville Independent School District*, No. 4:19-cv-00109 (E.D. Tex. 2019); *Tyson v. Richardson Independent School District*, No. 3:18-cv-00212 (N.D. Tex. 2018); *Dwight, et al. v. Raffensperger*, No. 1:18-cv-2869-RWS (N.D. Ga. 2018); *League of Women Voters of Michigan, et al. v. Johnson*, No. 2:17-cv-14148-DPH-SDD (S.D. Mich. 2018); *One Wis. Institute, Inc. v. Thomsen* 198 F. Supp. 3d 896 (W.D. Wis. 2016); *Whitford v. Gill*, 218 F. Supp. 3d 837 (W.D. Wis. 2016); *Baldus v. Members of Wis. Gov't Accountability Bd.*, 849 F. Supp. 2d 840 (E.D. Wis. 2012).

State: *Driscoll v. Stapleton*, No. DV 20 0408 (13<sup>th</sup> Judicial Ct. Yellowstone Cty., MT, 2020); *North Carolina Alliance for Retired Americans et al. v. North Carolina State Board of Elections* (Wake Cty., NC), absentee ballots (2020); *LaRose et al. v. Simon*, No. 62-CV-20-3149 (2d Jud. Dist. Ct., Ramsey Cty., MN), absentee ballots (2020); *Michigan Alliance for Retired Americans et al. v. Benson et al.* No 2020-000108-MM (Mich. Court of Claims), absentee ballots (2020); *Priorities U.S.A., et al. v. Missouri, et al.*, No. 19AC-CC00226 (Cir. Ct. of Cole Cty., MO 2018); *Milwaukee Branch of the NAACP v. Walker*, 851 N.W. 2d 262 (Wis. 2014); *Kenosha Cty. v. City of Kenosha*, No. 11-CV-1813 (Wis. Cir. Ct., Kenosha Cty., WI 2011).

Courts consistently have accepted my expert opinions, and the basis for those opinions. No court has ever excluded my expert opinion under *Daubert* or any other standard. Courts have cited my expert opinions in their decisions, finding my opinions reliable and persuasive. See *Driscoll v. Stapleton*, No. DV 20 0408 (13<sup>th</sup> Judicial Ct. Yellowstone Cty., MT, 2020); *Priorities U.S.A., et al. v. Missouri, et al.*, No. 19AC-CC00226 (Cir. Ct. Cole Cty., MO 2018); *Whitford v. Gill*, 218 F. Supp. 3d 837 (W.D. Wis. 2016); *One Wis. Inst., Inc. v. Thomsen*, 198 F. Supp. 3d 896 (W.D. Wis. 2016); *Baldus v. Members of Wis. Gov't Accountability Bd.*, 849 F. Supp. 2d 840 (E.D. Wis. 2012); *Milwaukee Branch of*

*the NAACP v. Walker*, 851 N.W. 2d 262 (Wis. 2014); *Baumgart v. Wendelberger*, No. 01-C-0121, 2002 WL 34127471 (E.D. Wis. May 30, 2002).

### III. Data Sources

In reaching my conclusions in this matter, I relied on the following data and materials:

- Arkansas voter registration and voter history files generated on June 1, 2021, and October 21, 2021.
- Data from the Pulaski County Election Commission listing rejected provisional absentee ballots, cured provisional absentee ballots, and cured or rejected provisional ballots in the 2020 general election.
- A file containing data on absentee ballot applications, application status, the dates ballots were sent and returned, and the mode of ballot return, from the Secretary of State's office from a subset of Arkansas counties for primary and general elections since 2016.
- Arkansas voter turnout and registration statistics at the state and county levels reported on the Arkansas Secretary of State web site.<sup>5</sup>
- State level voter turnout and eligible voter populations reported on the United States Election Project.<sup>6</sup>
- Publicly available databases of voter fraud allegations, investigations, and prosecutions.
- 1-year and 5-year American Community Survey data from 2010-2019.
- Current Population Survey November Registration and Voting Supplement data, 2008-2020.
- 2016, 2018, and 2020 The Election Administration and Voting Survey, released by the United States Election Assistance Commission.<sup>7</sup>
- The peer-reviewed academic literature and other news sources cited in this report.

### IV. Background

#### A. The Calculus of Voting

To evaluate the potential effects of the Challenged Provisions, I turn first to the models and methods used to study voter turnout. For at least 60 years, political scientists and economists have accepted the model of voter turnout as a function of the costs and benefits of voting. As an intellectual framework, it is canonical.

The basic model, originally proposed by Riker and Ordeshook (1968, 28), postulates that the utility of voting is expressed in the following form:

$$\text{Utility of voting} = BP - C + D$$

Here, B is the benefit a voter receives if her candidate wins; P is the probability of a voter casting the decisive vote; C a measure of the cost of voting; and D a theoretical measure of the nonmaterial satisfaction a voter derives from the act of casting a ballot (from such sources as participating in an important civic ritual, or compliance with the social expectation of voting). The probability of an individual voting rises as the utility goes up. The cost C reflects the concrete monetary, time, informational, and compliance costs associated with voting.

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<sup>5</sup> <https://www.sos.arkansas.gov/elections/research/election-results>.

<sup>6</sup> <http://www.electproject.org/>.

<sup>7</sup> <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys>.

Because the probability that a single vote will be decisive is extremely low (meaning that BP is very close to zero), theorists have focused on examining the cost side of the voting calculus (as measured by C). This conceptual relationship prompted decades of scholarship confirming the broad outlines of the basic theory (Sanders 1980; Rosenstone and Wolfinger 1982; Aldrich 1993; Darmofal 2010; Monroe and Sylvester 2011; Leighley and Nagler 2014; Blais et al., 2019; Cantoni 2020). As a rule, increasing the direct or indirect costs associated with voting—higher information costs associated with complex administrative processes or confusing eligibility requirements, increased direct costs such as the time required to travel to inconvenient polling place locations, shortened polling place hours, or long wait times at polling places—will reduce turnout, both in the aggregate and in the probability that a given individual votes. In fact, unexpected changes to voting processes—even those that might be designed to make voting easier—can increase the informational and administrative costs of compliance, as voters accustomed to voting in a habitual way face new rules and unfamiliar requirements.

A clear demonstration of the validity of cost considerations is the connection between socioeconomic status and turnout, a relationship uncontested in the academic literature. Voters better positioned to overcome the informational and time costs of compliance with administrative and regulatory requirements for voting have higher turnout. Voters less able to overcome those costs are less likely to vote. Education and income (as well as experience with voting) lowers the costs of complying with bureaucratic requirements, as well as the informational costs of learning about those requirements.

Education and income are the factors most strongly linked to turnout (Leighley and Nagler 2014, 27-29; Ojeda 2018; Burden et al. 2014). “The relationship between education and voter turnout,” note Sondheim and Green (2010, 174), “ranks among the most extensively documented correlations in American survey research.” Turnout is also associated with health (Pacheco and Fletcher 2015; Blakely, Kennedy and Kawachi 2001), as well as unemployment, poverty, and income loss (Rosenstone 1982; Shah and Wichowsky 2018). Higher income and education levels are also associated with voters possessing more accurate information about complex administrative requirements to voting, such as what types of photo identification qualify as voter ID (DeCrescenzo and Mayer 2019).

Leighley and Nagler summarize the effects of socioeconomic status as affecting the ability to absorb the costs side of the voting calculus. Higher education increases the probability of voting “by enhancing individuals’ cognitive skills (and therefore reducing information costs), by increasing the gratification that individuals receive from politics (thus increasing benefits), and by providing (bureaucratic) experience that is useful in dealing with the costs of voting such as voter registration” (2014, 58-59). Similarly, income affects turnout via analogous mechanisms: people living in poverty have less time to expend on nonessential day-to-day activities; wealthy people are more likely to live in a context where political engagement is a norm, and perceive themselves to have higher stakes (2014, 58-59).

The concept of transaction costs captures the burdens associated with overcoming bureaucratic requirements, compliance costs, and administrative hurdles associated with an individual’s interaction with government to attain a specific goal or fulfill a legal requirement (such as filing a tax return or enrolling in Medicare). In the context of voting, these costs include informational and learning costs, the effort required to comply with administrative requirements, indirect costs (such as time or opportunity costs), and direct monetary costs.

Considerations of transaction, informational, and compliance costs provides a framework for evaluating voting laws (Moynihan, Herd, and Harvey 2014), how effectively election officials will be able to efficiently adapt to the new environment, and how voters will be affected by significant changes in voting



methods.<sup>8</sup> This has direct application in assessing the four changes to the four changes in voting practices enacted in Arkansas and addressed in this report.

## **B. Election Administration, Administrative Burdens, and Turnout in Arkansas**

Arkansas had, even prior to enactment of the Challenged Provisions, one of the most restrictive voting regimes in the U.S. Even before these new restrictions went into effect, Arkansas' election laws already required:

- A registration deadline 30 days before an election (delivery of completed application to election officials, or mailed application postmarked by that deadline)
- Limitations on absentee voting, which is only available for voters “unavoidably absent” from polling places on election day, those unable to vote on election day because of “illness or disability,” or those residing in state-licensed long-term care or residential facilities. Arkansas is the only state that requires physical absence or disability for absentee voting with no exceptions based on age.<sup>9</sup>
- No online voter registration
- No online absentee ballot applications
- Absentee ballot requests for specific elections only, rather than allowing for standing absentee ballot requests, unless a voter is disabled or confined to a long-term care or residential facility.
- A photo ID requirement with an affidavit exception or failsafe that allowed voters to cast their ballots even if they lacked required photo ID.

All of these restrictive laws remain in effect in conjunction with the Challenged Provisions, with the exception that, of course, the Photo ID requirement is now a *strict* photo ID requirement as a result of Act 249 (2021), which eliminated the affidavit exception as a failsafe for voters who lacked the required photo ID.<sup>10</sup>

According to the National Conference of State Legislatures, no other state combined: (1) a 30-day voter registration deadline; (2) no absentee ballots except for absent, disabled or ill voters without any age-based exception; (3) no online voter registration; and (4) no opportunity to request or apply for an absentee ballot online..

One clear effect of these rules is that Arkansas *already* has significantly lower turnout than almost every other state. Figure 1 shows state-level turnout for general elections between 2008 and 2020, calculated as the percentage of the voting eligible population.<sup>11</sup> Each circle represents a state, and Arkansas is labeled

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<sup>8</sup> The public administration literature calls these costs “administrative burden” (Herd and Moynihan 2019), focusing on the costs to individuals. To avoid confusion with how the term is used in administrative law, where it refers to the cost of regulatory compliance for governmental agencies, I use transaction and compliance costs when analyzing the effect of absentee ballot processes on an individual’s ability to vote.

<sup>9</sup> Mississippi is the only other state with such restrictive absentee ballot rules, but it allows any voter over age 65 or older to vote absentee. <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx#excuses>.

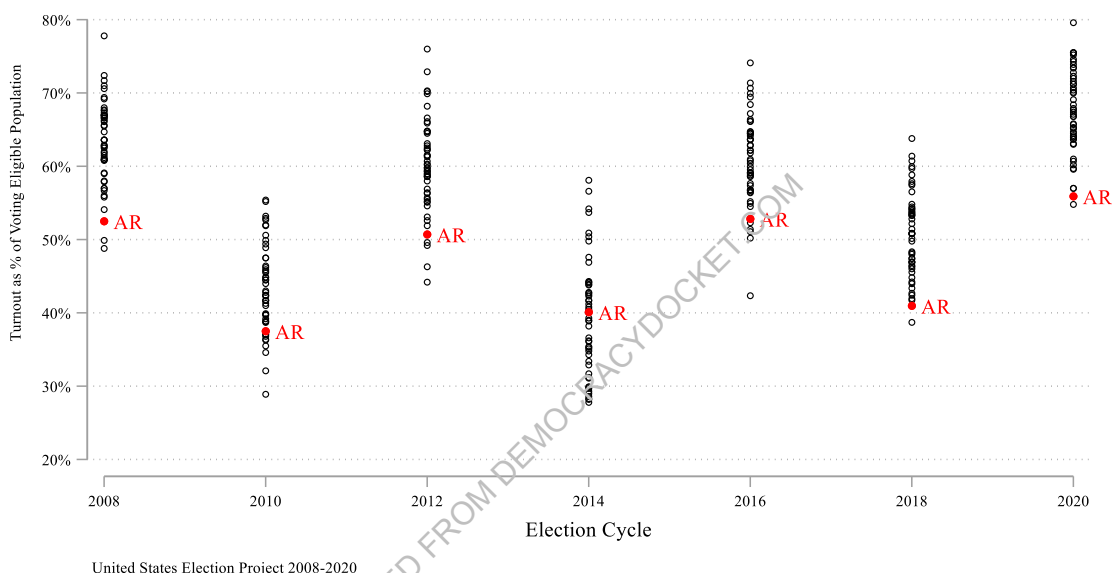
<sup>10</sup> The National Conference of State Legislatures classifies Strict Photo ID as requiring voters to show a qualifying photo ID in order to vote, without a mechanism for a voter to qualify another way, such as signing an affidavit or showing other documentation. <https://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>.

<sup>11</sup> The Voting Eligible Population (VEP) estimates the number of ineligible voting age populations, generally noncitizens or people with felony convictions (the latter depending on the state).

separately in red. Arkansas is consistently near the bottom of state-level turnout percentages, ranking 48<sup>th</sup> in 2008, 40<sup>th</sup> in 2010, 45<sup>th</sup> in 2012, 44<sup>th</sup> in 2016, and 49<sup>th</sup> in 2018. In 2020, when turnout nationally reached the highest levels in 120 years, Arkansas ranked 49<sup>th</sup>. The only cycle in which Arkansas was more typical was the 2014 election (ranking 27<sup>th</sup>), when national turnout fell to its lowest level since 1942.

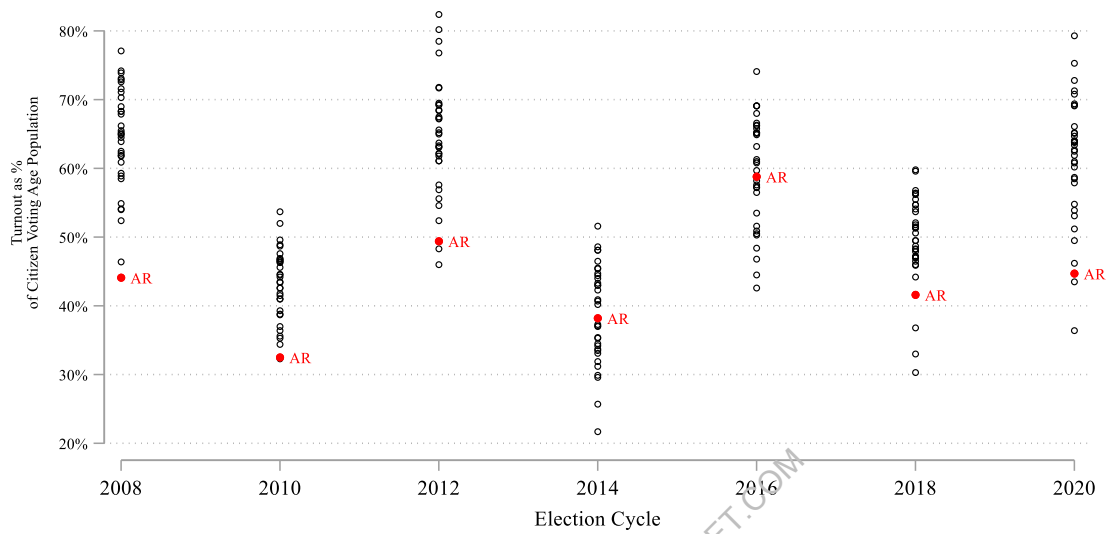
When all states and cycles are included, Arkansas has the lowest maximum turnout (56.1% in 2020) of any state in any year between 2008 and 2020.

Figure 1  
State Level VEP Turnout 2008-2020



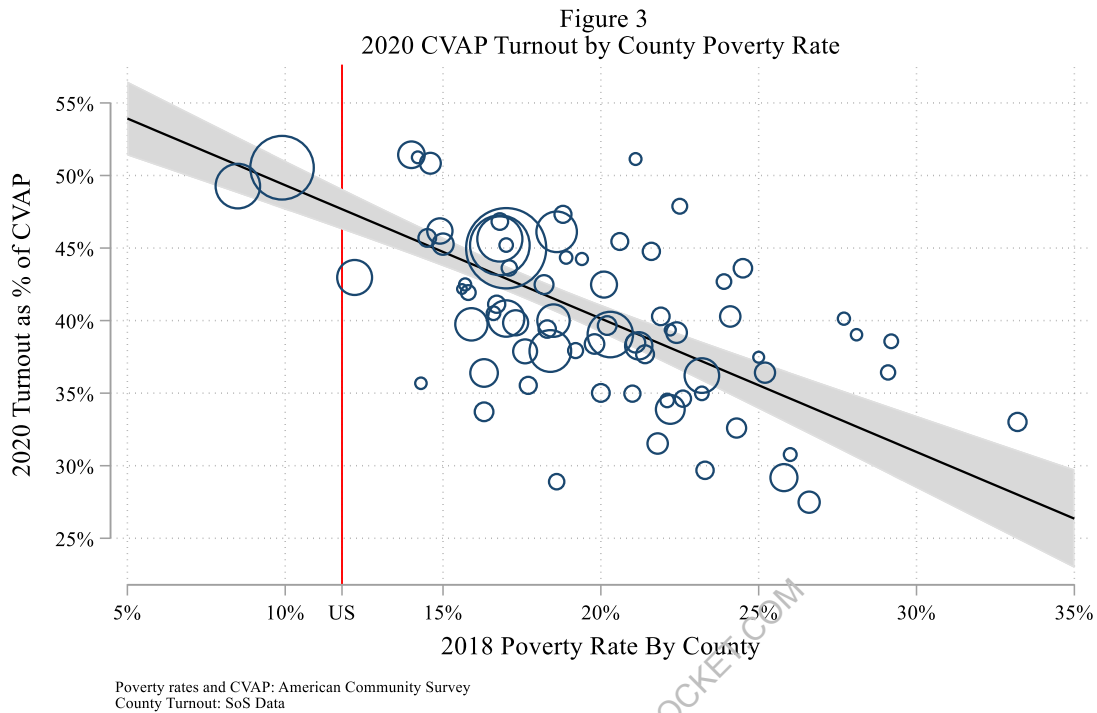
The same pattern occurs when we examine subpopulations. Figure 2 shows state-level turnout among African Americans, using data from the Current Population Survey November Voting and Registration Supplement. In most election cycles, African American turnout in Arkansas is ranked near the bottom when compared to African American turnout in other states.

Figure 2  
State Level CVAP Turnout 2008-2020  
African American Alone



Current Population Survey November Voting and Registration Supplement  
Table 4b

This pattern is also reflected in variation *within* Arkansas. Figure 3 plots county-level turnout as a percentage of the citizen voting age population in the 2020 general election and county-level poverty rates (measured using the American Community Survey 5-year data). Because 2020 ACS data are not yet available, I use the 2018 poverty rate as a proxy. Unsurprisingly, Figure 3 shows what research has long confirmed (Leighley and Nagler 2014), that low-income voters are less able to absorb the opportunity cost (or the concrete monetary costs, if registering involves time and travel) required to vote, and therefore show disparately lower turnout disparately compared with voters with higher income.



In Figure 3, each county is represented by a circle, with the size of the circle proportional to its citizen voting age population (CVAP).<sup>12</sup> The black line is the regression line representing the relationship between county-level poverty rates and turnout. The gray-shaded area is the 95% confidence interval for the regression estimates. The vertical red line represents the 2018 nationwide poverty rate of 11.8%.

The relationship is obvious – the higher a county’s poverty rate, as represented by the percentage of individuals in the county with an income below the poverty line in 2018, the lower the county’s voter turnout. Seventy-three of the seventy-five counties in Arkansas had a poverty rate exceeding the national rate, and turnout in these counties ran twenty- to thirty-five percentage points behind the national 2020 CVAP turnout rate of 67%.

Figure 4, which plots turnout by poverty rate for elections between 2012 and 2018, shows the same pattern. In each case, there is a statistically significant drop in turnout as poverty rates increase.

<sup>12</sup> Citizen Voting Age Population figures remove noncitizens from the voting age population denominator when calculating turnout rates.

Figure 4: Turnout by Poverty Rates, 2012-2018 Elections

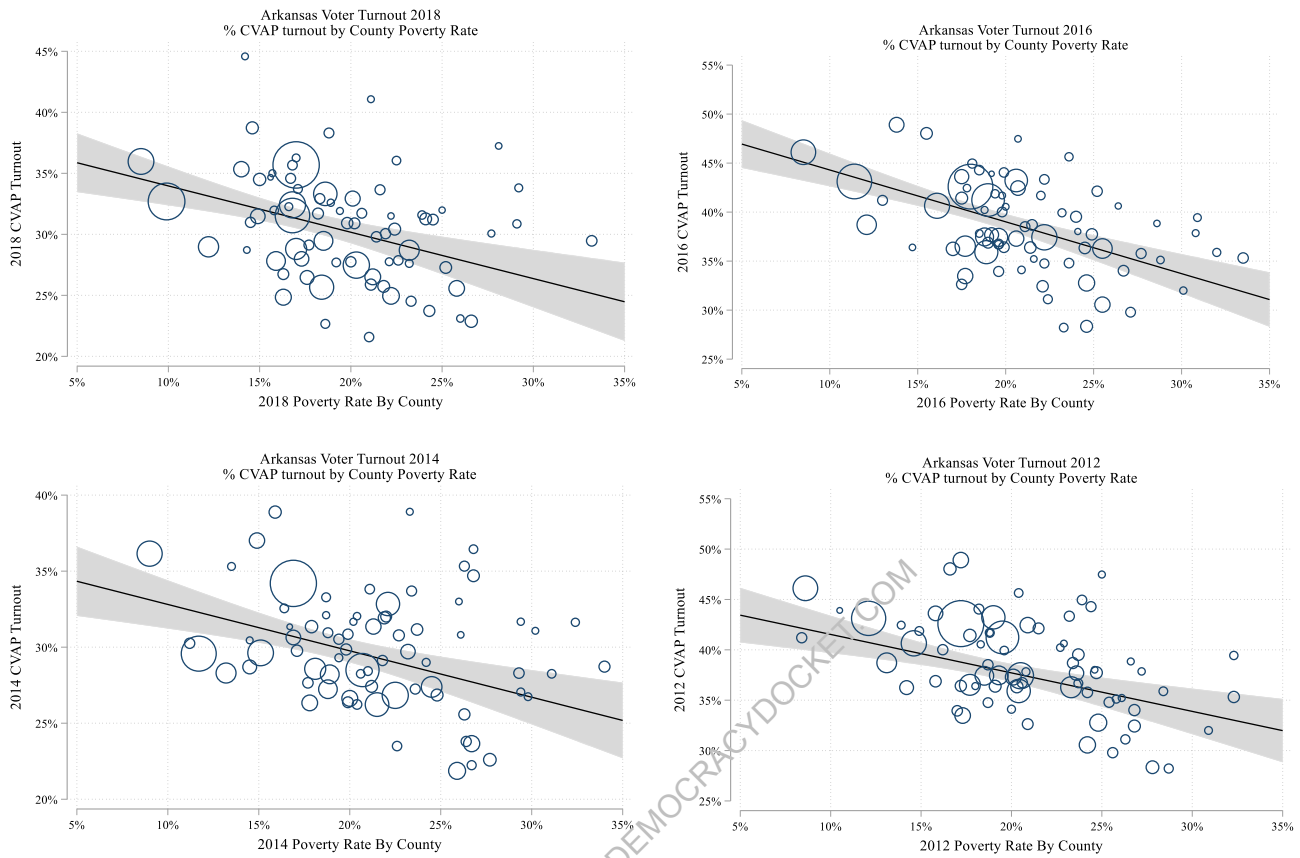


Figure 5 plots county-level turnout in 2020 and the county-level percentage of adults over age 25 who have a 4-year college degree. Here, higher levels of education are clearly associated with higher turnout, as would be expected.

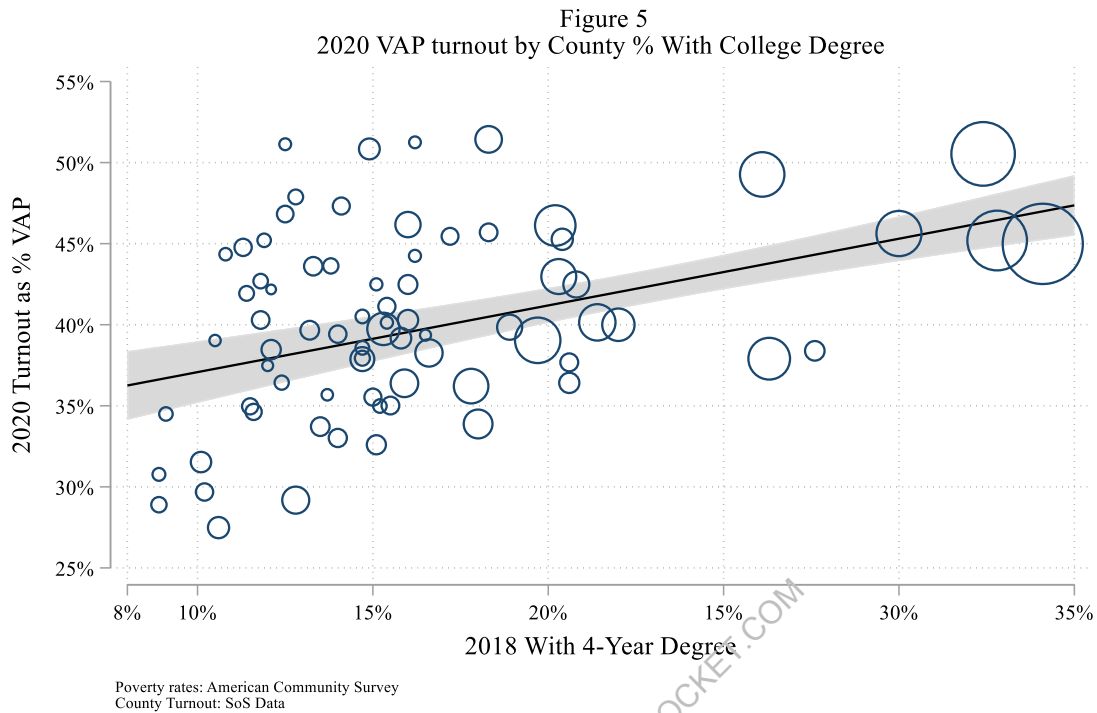
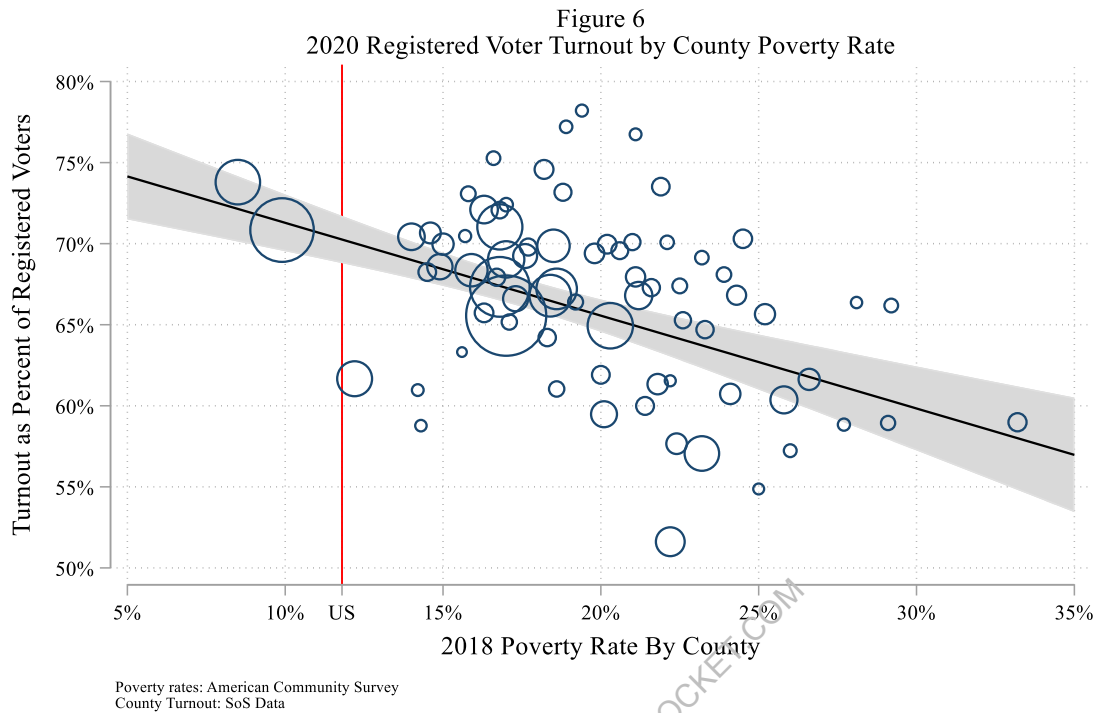


Figure 6 shows the relationship between poverty and turnout using a second measure of turnout, the percentage of *registered voters* in a county that cast ballots in the 2020 presidential election. When measured this way, turnout captures the effect of voting rules on individuals who have already overcome the main hurdle before voting – taking the first administrative step of registering.

Figure 6 shows that 2020 turnout decreased among *registrants* as the count-level poverty rate increased, likely because of strict absentee ballot requirements as well as other administrative barriers to voting such as photo ID (on the general relationship between no-excuse absentee voting and higher turnout, *see* Leighly and Nagler 2014, 112-119). Overall, the percentage of registrants who voted in 2020 (66.9% as calculated by the Arkansas Secretary of State) was twenty-five percentage points behind the national figure of 91.9% (as calculated by the Census Bureau).



Figures 1 through 6 show two clear patterns: First, the figures show that the stark administrative burdens of complying with Arkansas’ already extremely restrictive voting laws has had a clear effect on turnout, making Arkansas one of the lowest-turnout states in the nation, and that the burdens do not fall equally across populations. Higher poverty rates, and lower educational attainment correspond to greater burdens and costs associated with voting, and, as a result, result in lower turnout.

Second, the figures show that voters in Arkansas already face two sets of administrative hurdles when trying to vote: the unusually strict rules for registration (30 days before the election, no online or electronic registration), and *then* the unusually strict rules for voting (no absentee voting without excuse, no absentee voting exceptions for age, and non-strict photo ID). The strong county-level relationship between poverty, education and turnout shows that not all voters are affected by these rules in the same way. An immediate consequence of these relationships is that enacting even more restrictive voting practices will exacerbate the effects of poverty on turnout.

### C. Absentee Ballot Rejection Rates

Even before enactment of the Challenged Provisions in 2021, the general difficulty in voting in Arkansas extended even to those who submit absentee ballots. Absentee ballots can be rejected for a variety of reasons: late arrival, a missing signature, a mismatched signature, data entry errors by the voter, or lack of ID if a voter had not (prior to 2021) submitted an optional verification affidavit under the affidavit exception. Prior to Act 249, an absentee ballot that did not include either a copy of required photo ID or the signed affidavit was treated as a “provisional” ballot, which would only be counted if the voter cured their ballot by signing the affidavit or presenting required photo ID within a fixed cure period after the election. Now, of course, the affidavit exception is no longer permitted under Act 249, and there is no

exception to the strict photo ID requirement. For any other reasons for rejection, voters are not able to cure or correct for those deficiencies and their votes are not counted.

A consequence of these restrictive rules, which have now become even more restrictive under Act 249 and Act 973, is that Arkansas already had very high absentee ballot rejection rates compared to other states. Figure 7 shows rejection rates by state from 2016 to 2020, as well as the national rate of absentee ballot rejection.<sup>13</sup>

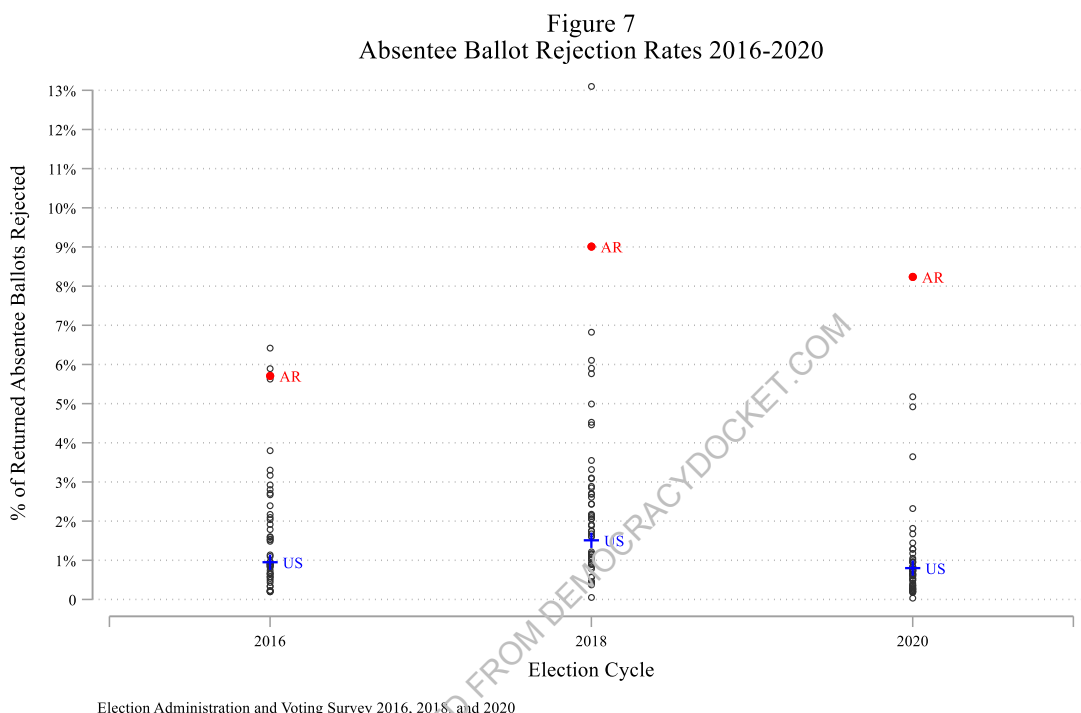


Figure 7 shows clearly that absentee ballot rejection rates in Arkansas are extremely high compared to other states (and the national average, shown in blue). In 2016, Arkansas had the 3<sup>rd</sup> highest rejection rate (5.7%), six times the national rate of 0.95%. In 2018, Arkansas was the 2<sup>nd</sup> highest (9%), nearly six times the national rate (1.51%). And in 2020, when an unusually large number of voters all over the country were casting absentee ballots for the first time because of COVID concerns, Arkansas had the highest rejection rate in the country (8.2%), over ten times the national rate of 0.8%.<sup>14</sup> The number of absentee voters in Arkansas increased by nearly 4 times in the 2020 General Election, because voters were allowed to cite COVID health concerns as a reason for requesting an absentee ballot in that election.<sup>15</sup>

The changes to absentee voting made in Acts 973 and 736, which moved the window in which voters can return absentee ballots in person, applied a more restrictive signature matching requirement for absentee ballot applications, and added a requirement that voters include a copy of their photo ID with the submitted

<sup>13</sup> Not all counties reported data to the EAVS survey. In 2016, 69 counties reported nonzero absentee ballot data; in 2018, 62 counties; in 2020, 70 counties.

<sup>14</sup> Nationally, over 65.6 million voters voted by mail in 2020, nearly double the 33.5 million who voted by mail in 2016.

<sup>15</sup> Executive Order 20-44, August 7, 2020. [https://governor.arkansas.gov/images/uploads/executiveOrders/EO\\_20-44.pdf](https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-44.pdf).



ballot and eliminated the exception for signing an affidavit of identity in place of a photo ID, are virtually certain to drive rejection rates higher. I discuss the specific likely effects below.

## **V. Impact of the Challenged Provisions on the Costs of Voting in Arkansas**

As noted in Section I, above, the changes in election administration under the Challenged Provisions include: (1) removal of the affidavit exception to the state's voter ID law and requiring all voters to present a qualifying photo ID in order to vote, including absentee voters who must now either present required photo ID in person or include a copy of their required photo ID along with their absentee ballot;<sup>16</sup> (2) changing the deadline for the in-person return of a completed absentee ballot from the day before an election to the Friday before an election;<sup>17</sup> (3) a requirement that a voter's signature on an absentee ballot application match the voter's signature on file with election officials on the voter's registration;<sup>18</sup> and (4) a prohibition on anyone but voters, or others there "for [an undefined] lawful purpose," within 100 feet of a polling place.<sup>19</sup> Each of these changes is likely to have a material effect on the ability to vote.

### **A. There is No Legitimate Need for the Challenged Provisions.**

The justification for tightening voting laws has been, both in general and in Arkansas, a claim that such changes are necessary to protect election integrity and public perceptions of election integrity. An explicit corollary of this claim is that existing structures were vulnerable to fraud or illegal votes, or that fraud occurred in the 2020 presidential election. There is no evidence that either of these claims is true. Allegations of voter fraud are easy to make, and the academic literature has shown, time after time, that the allegations almost always fall apart when subjected to scrutiny (Minnite 2010).

These same false claims have been cited as the purported purpose behind the Challenged Provisions. For instance, I watched the video of the April 19, 2021, hearing of the Arkansas House State Agencies and Governmental Affairs Committee, where members voted to approve a "do pass" resolution on Senate Bill 643 (2021) (which would become Act 973), indicating Committee approval of the bill to change the deadline for absentee ballot submission from the day before the election to the Friday before the election. The discussion of the bill was cursory, lasting roughly 18 minutes, and consisted largely of presentations by the Senate and House sponsors of the legislation (Senator Kim Hammer and Representative Jack Ladyman) and remarks by one member of the public who spoke against the bill. No data, empirical findings, or documentary evidence were presented.

The justifications for the bill were phrased in general terms, with the sponsors claiming that the absentee ballot procedure needed to be "tightened up," and that the changes were needed to "improve [the] integrity of the voting system." There were several references to alleged irregularities in absentee ballot practices around the country (including one event in Madison, WI, which I discuss below), though, notably, none of which were actually shown to have resulted in any improper or illegal votes. Senator Hammer's explanation for *why* he chose the Friday deadline (after repeatedly correcting himself that the legislation set the "close of business" on Friday as the deadline, not "5:00 pm") was "we wanted to make sure that the ballots were actually secured [and] accounted for on Monday in the event there were any missing ballots." This explanation makes no sense. As far as I am aware it was not based on any past instance in which absentee ballots returned in person went "missing" in Arkansas or anywhere else. Moreover, the explanation amounts to a claim that moving the ballot deadline back by three full days, to the Friday before Election Day, was necessary to make sure clerks had the ballots on Monday. Finally, it makes no sense the deadline for early

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<sup>16</sup> Act 249, Arkansas Constitution, Amendment 51 § 13(b)(4)(A)(i)(a)-(c)).

<sup>17</sup> Act 973, Arkansas Code § 7-5-404(a)(3)(A) and § 7-5-411(a)(2) and (3).

<sup>18</sup> Act 736, Arkansas Code § 7-5-404(a)(1)(A).

<sup>19</sup> Act 728, Arkansas Code § 7-1-103(a)(23).

voting remains the day before the election, while the deadline for mailed absentee ballots remains election day itself.

At a related hearing on April 12, Senator Kim Hammer cited events held in Madison, WI prior to the 2020 general election as evidence of the risks of absentee voting. At these events, city election officials were available in Madison parks on two dates (September 26 and October 2, 2020) to accept absentee ballots hand delivered by voters (called “Democracy in the Park”).<sup>20</sup> Senator Hammer claimed that these events demonstrated the need for ballots to be returned only to clerk offices:

Some may say, well, why? Because, quite honestly, we don’t want any absentee boxes left out there where people can just drive by and leave them. In one particular area, not in Arkansas, but in one particular area they had what they called “Democracy in the Park.” They had tents out there where people would just come and leave, their, you know, absentee ballots out there with no guidance or structure.<sup>21</sup>

This is completely false. At these events, sworn poll workers could accept absentee ballots and serve as witnesses for voters submitting their ballots, and the Madison City Attorney concluded that the events were legal and secure.<sup>22</sup> Despite claims made by some state legislators that the events were not permitted under Wisconsin law, no lawsuits were filed prior to the election, and no post-election lawsuit alleging improper collection of ballots at the events succeeded.<sup>23</sup>

More importantly, there is no evidence of electoral irregularities or voter fraud in Arkansas that warrant the changes.

I searched for cases of voter fraud in Arkansas using the News21 database of voter fraud cases since 2000 (<https://votingrights.news21.com/article/election-fraud/>), the legal literature on heinonline.org, cases recorded by Minnite (2010), records from the Presidential Commission on Election Integrity made available by the Maine Secretary of State (<http://paceideas.sosonline.org/>), tracking by then-Loyola University Law School Professor Justin Levitt (Levitt 2014), and the Heritage Foundation Election Fraud database.<sup>24</sup>

These sources produced evidence of only 4 instances of confirmed voter fraud in Arkansas since 2002: a voter who pled guilty to submitting 25 absentee ballots in 2002, an elected Alderman in Beebe City who voted twice in a 2016 primary election, and an elected State Representative, his son, and two campaign workers who bribed absentee voters and destroyed ballots in 2011; and a voter who cast ballots in both Arkansas and Nevada in 2016 (in this case it appears that the illegal voting occurred in Nevada; see Erickson 2021).

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<sup>20</sup> <https://www.cityofmadison.com/calendar/democracy-in-the-park>.

<sup>21</sup> Transcript, Senate State Agencies and Governmental Affairs Committee, April 12, 201, p. 3.

<sup>22</sup>

<https://www.cityofmadison.com/clerk/documents/election/Atty%20Tseytlin%20Dem%20in%20Parks%2009.26.20.pdf>.

<sup>23</sup> The Wisconsin Supreme Court dismissed a lawsuit filed by the Trump campaign, challenging ballots in Dane and Milwaukee Counties, citing among other reasons Democracy in the Park (<https://www.wicourts.gov/sc/opinion/DisplayDocument.pdf?content=pdf&seqNo=315395>).

<sup>24</sup> In a 2011 book, *Waiting for the Cemetery Vote: The Fight to Stop Election Fraud in Arkansas* (Fayetteville: University of Arkansas Press), former Arkansas Supreme Court Justice Tom Glaze cited examples of election fraud from the 1960s and 1970s, though he claimed without evidence that such practices were still possible. Notably, the cases involved *election fraud* committed by elected officials and campaign personnel, not *voter fraud* by voters.

These instances represent a vanishingly small percentage of overall votes cast over this period. Since 2002, at least 13,785,150 ballots have been cast in on-year general and primary elections in Arkansas.<sup>25</sup> The total rate of absentee ballot fraud over this period is in the range of 0.0002%.

The Presidential Commission on Election Integrity, a commission established by President Donald Trump in 2017 and created with the expressed purpose of identifying cases of voting and voter registration fraud, disbanded within a year without issuing a report and without ever identifying any credible evidence of vote fraud (Tackett and Wines 2018). However, the records of the commission reveal the typical pattern of vote fraud claims: unproven allegations based on unreliable information, and generalized claims of election irregularities based on faulty or misread data.

The Commission records show a handful of claims made about Arkansas, none of which actually offered any credible evidence of vote fraud. In one hearing, former Kansas Secretary of State Kris Kobach claimed that the Interstate Cross Check<sup>26</sup> system had found a married couple who had voted in both Arkansas and Kansas, though he did not say in what year, and Kimball Brace reported the total number of voters in 2004 to be exactly equal to the presidential vote, although he did not specify why this would be a problem.<sup>27</sup> This first claim was offered with no evidence, and the Interstate Crosscheck system is well-known to produce wildly inaccurate claims of double-voting (with incorrect identifications outnumbering actual cases by a 300-1 ratio, corresponding to an error rate of roughly 99.7%; See Goel et al. 2020). In 2019, the Kansas Secretary of State admitted that the program was flawed, settling a lawsuit after 1,000 voters said their personal information was improperly released through the Cross Check program.<sup>28</sup> Similarly, the claim about 2004 turnout and voting statistics in Arkansas is both incorrect and fundamentally misleading. No data was cited in this claim, which is belied by the Arkansas Secretary of State website, which shows that there were more than 8,000 ballots with overvotes or undervotes in the 2004 presidential race. Specifically, the Secretary of State website shows a total of 1,054,945 votes cast in the presidential race, which is the total number of ballots cast (1,070,573), less the total number of invalid ballots not counted because of an overvote or undervote (8,379). To suggest something improper from these totals reflects either a lack of understanding of election data or an intentional effort to sow doubt where no cause exists.

There are, however, instances of voter intimidation that have occurred in Arkansas. Minnite (2010, 2) gives the following example from the 2002 midterm election:

In Jefferson County, Arkansas, at the core of a Democratic district where there were highly competitive races for governor, the U.S. House, and the U.S. Senate, and where African Americans were forty percent of the population, a group of predominantly black voters who went to the County Court House to cast their votes at the beginning of the early voting period were confronted by Republican poll watchers who photographed them and

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<sup>25</sup> This total includes all general and primary elections since 2002, except for the 2002 preferential primary, which does not have readable totals on the Secretary of State web site. It does not include off-year or runoff elections. It includes both statewide primary elections in 2008, when Arkansas held separate primary elections for president (held on February 5, 2008) and state offices (held on March 20, 2008).

<sup>26</sup> The Cross Check program aggregated voting registration records in between 13 and 28 states depending on the election year, and attempted to identify individuals registered and/or voting in more than one state. Because available voter registration files do not include unique individual identifiers (such as a social security number), potential matches used names, dates of birth, and the last 4 digits of a social security number (which was not always included), it had a large false-positive error rate. The system was suspended in 2019 as part of a legal settlement (see footnote 28).

<sup>27</sup> [http://paceidocs.sosonline.org/PDF/PROD001\\_0007082.pdf](http://paceidocs.sosonline.org/PDF/PROD001_0007082.pdf), p. 196.

<sup>28</sup> <https://www.aclukansas.org/en/press-releases/aclu-kansas-settlement-puts-crosscheck-out-commission-foreseeable-future-program>.

demanding to see identification. One poll watcher circulated behind the counter in the clerk's office and photographed voter identification on the clerk's computer screen.

The data on this point are conclusive: there is no material voter fraud in Arkansas, and nothing even hinting that Arkansas elections are not secure.

## **B. Types of Burdens**

The suite of changes to voting practices in Arkansas Acts 249, 728, 736, and 973 have one element in common: they all increase the costs of voting in Arkansas and prohibit certain practices that acted as a safety valve for eligible voters who otherwise would have been unable to vote. Some of the burdens are direct, such as the removal of the affidavit exception for voters lacking a qualifying photo ID or those who forget to bring one to the polls; some are informational, such as the change in the in-person absentee ballot delivery deadline from the day before Election Day to the Friday before Election Day; some are indirect, such as the prohibition on anyone but voters, or others there for some undefined other "lawful purpose," within 100 feet of polling places; and some that combine different types of burdens, such as the more restrictive requirement for signature matching on absentee ballot requests, which both create a new hurdle for voters to overcome and allow additional opportunities for election officials to reject absentee ballot applications.

That the Challenged Provisions will increase the cost of voting for Arkansans is not a function of inference. Time and again, voting research has demonstrated that raising the concrete, informational, or time costs of voting – whether by, for example, changing the locations of or consolidating polling places, increasing the distances voters must travel, imposing confusing administrative requirements, lengthening residency requirements, adding advance registration requirements, or eliminating convenience voting – reduce turnout, often by large margins (McNulty, Dowling and Ariotti 2009; Brady and McNulty 2011; DeCrescenzo and Mayer 2019; Dyck and Gimpei 2005; Haspel and Knotts 2005; Fauvelle-Aymar and François 2018). Conversely, administrative changes that reduce voting costs – generally associated with different forms of "convenience voting," such as election day registration and no excuse absentee voting – generally increase turnout (Burden et al. 2014).

These effects are a function of both concrete and time costs – such as the time required to travel to a obtain a qualifying photo ID, or travel to a county election office to show a photo ID the voter already possesses – but also the *informational costs* of voting, which are a function of the complexity of voting processes and how well voters understand them. Driving to a county office (or taking public transportation), and standing in line to obtain a photo ID are concrete costs. Learning where a county office is located (for obtaining a required photo ID), or what documents one needs to obtain a photo ID or to vote, are informational costs.

One reason, for example, that a 30-day registration deadline lowers turnout is that it requires voters to comply with an administrative rule well before election day, when the salience of the election and recognition of the need to register will be lower (this is also why election day registration leads to higher turnout).

These direct and informational effects can be reinforced by indirect effects, in which complex administrative practices and unclear rules lead to confusion, causing otherwise eligible voters to mistakenly believe they are not able to vote; or when requirements create a perception of risk, in which eligible voters fear consequences if they make an error during their effort to vote; or when requirements are so complex that eligible voters simply give up because they are not able to determine what the rules actually are.

## 1. Direct and Informational Burdens

### a. Voter ID

The elimination of the affidavit exception to Arkansas' voter ID law removes a failsafe mechanism for voters who do not have a qualifying photo ID.

Data show that voter ID laws – particularly strict forms that require voters to present a narrow set of IDs to vote, with limited or no exceptions – reduce turnout. The effect is both direct, in that material numbers of otherwise eligible voters do not possess an approved photo ID, and indirect, stemming from voter confusion about the law and inconsistencies in administration.

Early studies of the effect of strict voter ID laws produced mixed results, primarily because few states had them, and the data were often insufficient to reach clear conclusions (examples include Erikson and Minnite 2009; and Mycoff, Wagner and Wilson 2009). More recent work, based on a larger number of states and more election cycles, has reached a much stronger conclusion: stricter voter ID laws reduce turnout and have larger effects on identifiable subpopulations, particularly minorities, the elderly, and groups with lower incomes and education. The effects have been identified in three ways: from national surveys that study reasons for nonvoting; by estimating the number of registered voters who do not possess a driver's license or approved state ID; and by studying changes in turnout that occur after voter ID laws are implemented.

The Current Population Survey Voting and Registration Supplement, conducted by the U.S. Census Bureau, takes place in November of each election year, and surveys about 60,000 households about their voting history.<sup>29</sup> Using these data, Alvarez, Bailey, and Katz (2008), found that photo ID laws reduced turnout, with the largest effects among voters with low incomes and low levels of education. “[S]tricter requirements,” they write, “are significant negative burdens on voters” (2008, 17).

Smaller scale surveys find similar results. Two surveys of nonvoters in Texas found that roughly 6% of nonvoters in one congressional district cited lack of ID as the principal reason for not voting in 2014 (Hobby et al. 2015), and approximately 15% of nonvoters in two congressional districts cited lack of ID as a reason for nonvoting in 2016 (Jones et al. 2017). A study of 2016 nonvoters in Wisconsin's two largest counties found that 6% of nonvoters were prevented from voting because of the state's voter ID requirement (Mayer and DeCrescenzo 2018).

I had access to limited data on the number of voters who lacked ID but were able to vote after signing the voter identification affidavit. I received an Excel file of absentee and provisional ballot resolution in Pulaski County from the 2020 general election, with separate worksheets listing voter names and addresses for disqualified absentee ballots, absentee ballots with affidavit verifications, provisional absentee ballots that were curable, provisional absentee ballots that were cured, provisional ballots that were rejected, and incomplete data on additional batches of provisional ballots.

These data indicate that in the 2020 general election, 1,612 registrants in Pulaski County who had no photo ID were able to vote after signing an affidavit confirming their identity (what the clerks called an “optional verification of identity”). Pulaski County is the most populous county in the state, but it constitutes only a small share of voters and registrants: 14% of voters in the 2020 general election, and 14.7% of the state's registered voters as of June 21, 2021. It is not possible to extrapolate directly from the number of voter verifications signed in the Pulaski County to the number in the state, but the statewide total is *certain* to be much higher than the Pulaski County total, possibly by thousands.

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<sup>29</sup> <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-580.html>.

Data from Pulaski County also show 72 voters who appeared at the polls (either early or on Election Day) and cast a provisional ballot because they did not have a qualifying ID. Their ballots were rejected.

The requirement that voters submit a qualifying ID document along with their absentee ballot adds yet another complication to the voting process. Although the legislation, as enacted<sup>30</sup>, did not specify *how* voters would comply with this requirement, it likely means that absentee voters will be required to submit a physical copy of their qualifying ID as a printed image or photocopied document.<sup>31</sup> Because as far as I have been able to determine Arkansas counties do not have the ability to upload electronic copies of an ID, voters will have to create these physical copies themselves, or bring their ID to election officials to have their votes counted. This presents both an additional step, and also a significant burden for voters in households lacking the required equipment (in this case, likely a printer than can also make copies), or without the ability to present their photo ID in person, which includes absentee voters who vote via that method because of illness, infirmity, or limited mobility that makes them unable to vote in person.

I do not have authoritative data on the number of households that possess a printer or photocopier. However, the 2015-2019 American Community Survey estimated that 13.8% of households in Arkansas do not have a computer, and the rates by county range from 7.1% of households in Benton County to above 25% of households in 8 counties.<sup>32</sup> It is a reasonable inference that households without a computer, as well as some portion of households which do have a computer, do not have a printer or photocopier. What we need not assume, because it is apparent, is that voters who do not have this capability will have to travel to a library or business that has this ability, or present their photo ID in person, to have their absentee ballots counted as a direct result of Act 249.

This requirement increases the cost of voting, and will almost certainly result in otherwise eligible Arkansas voters being unable to cast a ballot that will be counted.

#### **b. Changes to Absentee Ballot Return Deadline**

Under previous law, absentee voters could return their ballot by mail or in person (either on their own, or in limited circumstances have a third party deliver their ballot). Unlike mail ballots that had a return deadline of 7:30 on Election Day, in-person absentee ballots had to be returned to clerk's offices by the day before an election.

Act 973 changed this deadline to the Friday before Election Day, or a full 3 days prior to Election Day. I noted above how the justifications for this change – as presented at the perfunctory legislative hearings on the bills – made little sense. Even accepting the logic of the arguments for the change – that clerks need more time to verify absentee ballots – there is no reason to treat in-person delivery of absentee ballots differently than in-person early voting, or from absentee ballots that are returned by mail. The more significant effect of this change is that voters will now face *three* separate absentee or early voting deadlines: one for in-person absentee ballot delivery (3 days prior to Election Day), one for in-person early voting (1 day prior to Election Day), and one for mail absentee ballot delivery (Election Day).

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<sup>30</sup><https://www.arkleg.state.ar.us/Acts/FTPDocument?path=%2FACTS%2F2021R%2FPublic%2F&file=249.pdf&ddBienniumSession=2021%2F2021R>.

<sup>31</sup> See, for example, the Washington County Election Commission website on absentee voting: <https://www.washingtoncountyar.gov/government/departments-a-e/election-commission/new-voter-id-law>.

<sup>32</sup> Ranging from 25.2% with no computer in Ouachita County to 35.1% with no computer in Woodruff County.

I received data with detailed information on absentee ballot submissions from 2016 to 2020. Each record in these files includes the voter's unique voter registration number, and information about the date and status of a voter's absentee ballot request, delivery, and submission.<sup>33</sup> By linking these records to the Arkansas Voter File (which also includes the voter's registration number), I can determine where the voter was registered in October 2021. The data indicate that not all counties reported this data to the Secretary of State's office, and the matching process showed records from around 36 counties.<sup>34</sup>

This is a subset of all seventy-four counties in the state, and is not representative of the entire state. In the 2020 general election, 20,531 absentee ballots were counted in the 36 reporting counties. While these data are not comprehensive, I am still able to draw specific inferences about what occurred in the reporting counties and can use the data to reach general conclusions and the statewide scope of the changes in absentee ballot deadlines.

The file shows the date that an absentee ballot was returned, and the mode of delivery (mail; in person by the voter or through an administrator, agent, or bearer). I can use this to determine how many voters returned their ballots in the 3 days before election day (or the period after new cutoff under Act 973).

Table 1 shows the number of absentee ballots returned in person in elections since 2016, based on the data provided, and the number delivered in the 3 days immediately prior to election day. Over this entire period, 8,668 voters have returned absentee ballots in person (29.1% of all absentee ballots returned), and 1,222 of those returned their ballots in this 3-day window. Apart from 2020, when only 9.9% of in-person absentee returns were in the 3-day prelection window, the percentage returned in the window was between 20.1% and 31.3%

<b>Table 1 - Absentee Ballots Returned in Last 3 Days</b>			
<b>Election</b>	<b>Absentee Ballots Returned In Person (reported)</b>	<b>Absentee Ballots Returned in 3-day Pre-election Window (reported)</b>	<b>% Returned in 3-day Pre-election Window</b>
<b>2020 General</b>	5,769	569	9.9%
<b>2020 Primary</b>	568	127	22.4%
<b>2018 General</b>	879	177	20.1%
<b>2018 Primary</b>	316	99	31.3%
<b>2016 General</b>	845	181	21.4%

<sup>33</sup> The data are contained in SOS\_0003-RFP3 through SOS\_0010-RFP.

<sup>34</sup> The combined data file shows where voters were registered in 2021, and it is possible that some voters had cast a ballot at a previous address in 2016 or 2018 and had moved since. In addition, two counties showed either 1 or 2 voters, which likely reflects voters who had moved.



<b>2016 Primary</b>	321	69	21.5%
<b>Total</b>	8,698	1,222	14.0%

Given that the reported data include less than one-fifth of all absentee ballots returned in the 2020 general election, it is a certainty that the number of ballots statewide that were returned in the 3-day window is greater than this figure, likely by many times.

The effect of Act 973 will be increasing the cost of absentee voting in Arkansas, not only by limiting the ability of voters to return their ballots in person, but increasing the informationally costs of navigating multiple deadlines for absentee ballot return. Research on voter ID, for example, finds that voters face not only direct costs— in that such laws present hurdles and even outright barriers to voters without photo ID – but also *indirect costs* stemming from confusion over whether a voter has the necessary ID to vote, uneven implementation, and uncertainty about what the requirements actually are. Surveys of voters in Wisconsin and Texas found consistently that voters misunderstand voter ID requirements ,and that significant percentages of registrants who said they did not vote because of a lack of identification actually possessed a form of ID that would allow them to vote (Hobby et al.; Jones et al. 2017; DeCrescenzo and Mayer 2019).

Act 973 will drive the absentee ballot rejection rate higher than it is now, disenfranchising voters who attempt to submit an absentee ballot.

### **c. New 100 Foot Restrictions Around Polling Places**

Act 728 created a new requirement for polling places, prohibiting anyone who does not have a “lawful purpose” from being closer to 100 feet of a polling place entrance. On the floor of the State House, Representative Karilyn Brown (R-41<sup>st</sup> district) cited claims about individuals “handing out water. I think there were sandwiches being handed out,”<sup>35</sup> though none of the allegations were documented. Arkansas law already prohibits electioneering activities within 100 feet of a polling place,<sup>36</sup> and voter intimidation.<sup>37</sup>

I do not have data on specific wait times and lines in polling places in Arkansas. Nevertheless, I can conclude that the effects of this law are likely to be greatest in areas with higher minority populations. Nationwide, minority voters were much more likely to wait at least 30 minutes to vote, and on average waited nearly 30% longer to vote than white voters (Chen et al. 2020; Stein et al. 2019). In addition, wait times are a function of how well-resourced local election offices are, which is more likely to affect polling places in areas with high poverty levels (Pitzer, McClendon and Sherraden 2021).

A lack of clarity about what constitutes a “lawful purpose” and who is responsible for making that determination (whether election officials or other voters) creates additional risks for the unequal application of poll worker discretion. And prohibiting the practice of offering water to voters who may be waiting in long lines with significant waiting times will have the effect of imposing disproportionate burdens on poor and minority voters.

<sup>35</sup> Transcript of House as a Whole session, April 13, 2021, p. 2.

<sup>36</sup> Arkansas Code §7-1-103(8).

<sup>37</sup> Arkansas Code §7-1-103(8).



## 2. Inconsistent Application of Discretion

Unequal exercise of discretion by election officials is a well-documented phenomenon in the elections administration literature (White, Nathan and Faller 2015; Atkeson et al. 2009; Atkeson et al. 2014; Cobb, Greiner and Quinn 2010; Kimball and Kropf 2006; Shino, Suttman-Lea and Smith 2020; Porter and Rogowski 2018; Page and Pitts 2009; Suttman-Lea 2020). Even when policies and rules are consistent, local officials can differ widely in how they interpret those rules and policies. This is not merely a theoretical problem. Peer-reviewed research has found wide variation in how election laws are applied at the local level, with differences attributable to how election officials are selected (Burden et al. 2013), partisanship (Porter and Rogowski 2018; Kimball, Kropf, and Battles 2006), polling place size (Burden et al. 2016), attitudes toward technology (Moynihan and Lavértu 2012), the complexity of election administrative rules (Chambers 2016; Burden et al. 2012), and poll worker race and ideology (Page and Pitts 2009).

### a. Overall Absentee Ballot Rejection Rates

While I am not able to observe individual-level decisions on the specific standards used in different counties, it is possible to show that absentee ballot rejection rates, and signature rejection rates (at least for absentee ballots themselves), vary considerably in the same county in subsequent elections. These findings have direct application for estimating the effect of a signature matching requirement for absentee ballot applications.

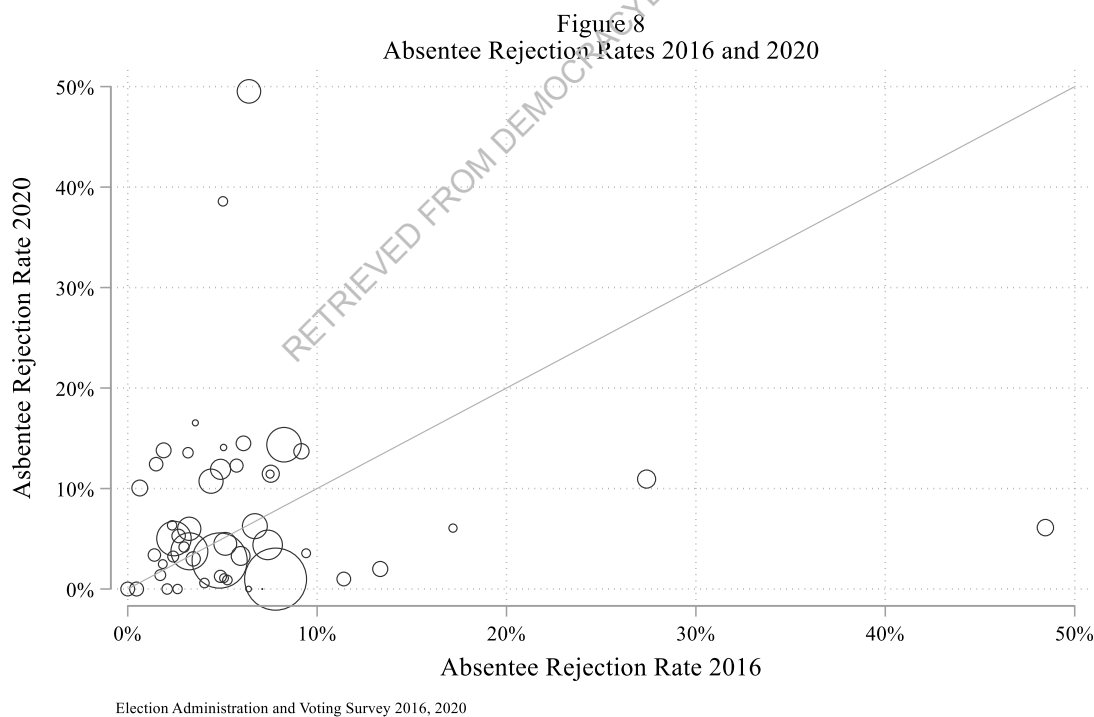


Figure 8 shows the overall absentee ballot rejection rates, comparing the rates in the 2016 and 2020 general elections by county, with the circle sizes proportional to the number of absentee ballots returned in the 2020 election. The data show extremely high variation in a single election, ranging between 0% and rates as high as 50% in small counties for both 2016 and 2020. The other key feature of this data is that the 2016 and 2020 rejection rates are almost entirely unrelated (the actual correlation between the two quantities is

0.03). Counties with high rejection rates in 2016 could have a rejection rate of close to 0% in 2020, and counties with low rejection rates in 2016 saw rejection rates in 2020 that were two to 10 times higher.

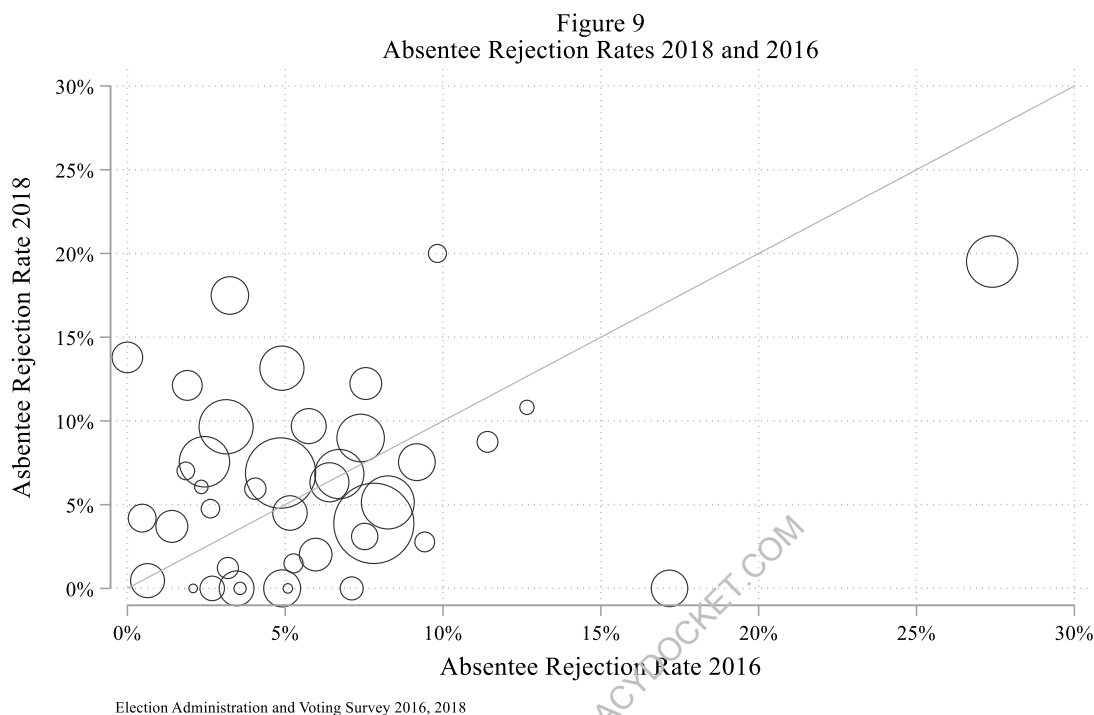


Figure 9 shows the same data comparing the 2018 and 2020 elections. Again, the rejection rates in the two elections are almost entirely unrelated (the correlation between them is  $-.06$ ), and variation between the cycles was high.

These county-level rejection rates are far higher than the absentee ballot rejection rate nationally, which was 0.95% in 2016, 1.51% in 2018, and 0.8% in 2020.

One explanation for the high rejection rates in Arkansas is that absentee voters rarely have significant experience with casting an absentee ballot, because the rules specifying who is eligible to vote absentee are so restrictive. Unlike states with no-excuse absentee voting, or permanent absentee ballot status, voters in Arkansas must certify that they will be unable to vote in person on election day, either because they are absent, ill, or physically disabled, or in a state-licensed long-term care facility. Moreover, unless a voter qualifies under the illness or disability condition, who can request absentee ballots for all elections in one calendar year, voters generally must request an absentee ballot separately for each individual election. In the 5 general elections between 2012 and 2020, 86.2% of absentee voters who voted absentee over that period did so only once, and 94.5% did so only once or twice.<sup>38</sup> Only 2.8% of voters were frequent absentee voters, voting 4 or 5 times over these cycles.

Another explanation is that county officials use different standards when rejecting or accepting absentee ballots. While some rejections will be binary – e.g., an absentee ballot received after election day is late and will be rejected, a ballot received on election day is on time – other judgments will involve discretion, such as whether or not the information on the ballot matches information in the voter file, whether the voter made errors in recording information on the ballot, whether the voter's signature matches, or whether

<sup>38</sup> These data are taken directly from the June 2021 voter registration and history file, which records the method of voting in each election. Only accepted absentee ballots are recorded in the file.

county officials are diligent in contact voters who submit an absentee ballot without the required ID or affidavit regarding the opportunity to cure.

In general, voters with less experience voting absentee are up to three times more likely to have their ballots rejected, either for arriving late, a signature mismatch, or some other administrative error (Cottrell, Herron, and Smith 2021), and rejection rates are higher for minority and young voters as well (Barringer, Herron and Smith 2020).

### **b. Signature Matching**

Signature matching – the comparison of signatures on two more documents in an effort to verify that the same person signed them – is the archetype of an idiosyncratic judgement that can easily result in inconsistent standards and incorrect conclusions. We need not evaluate the accuracy of signature matching in the ideal to know that in the election context it is *proven* to rely on entirely subjective standards that vary from one jurisdiction to the next and even from one person to another, to say nothing about variation from one election to the next. Even in states that devote considerable resources to establishing uniform practices and training, county officials use varying methods and standards (Janover and Westphal 2020).<sup>39</sup>

Errors in this process are common. A review of absentee ballots in Georgia rejected for mismatched signatures and subsequently cured found that the error rate – easily inferable from the number of cured signature mismatches, which is equivalent to the minimum number of false mismatches – was 32.4% in the 2020 general election in Georgia, and 60.4% in the January 2021 runoff elections (Swift and Gomen 2021, 8).

I did not have access to data on absentee ballot applications, but I can infer the consequences of the more restrictive signature matching process from data on absentee ballot submissions. Many counties in Arkansas do not report the number of absentee ballots rejected for signature mismatches (15 counties reported a nonzero number signature match rejections in 2016, and another 5 counties reported zero rejections; 5 counties reported a nonzero number in 2018, and another 28 counties reported zero rejections in 2018; and 10 counties reported a nonzero number and 32 counties reported zero rejections).

The rejection rates that are reported are very likely a reflection of inconsistent standards in counties, rather than a true rate of mismatches. The variation itself suggests as much. In 2020, rejection rates ranged from 0% in 32 counties to above 1.4% in two (Hot Springs and Arkansas); in 2018 the range was between 0% in 28 counties to 10% in Bradley County; and in 2016 the range was from 0% in 5 counties to above 2% in four (Faulkner, Poinsett, Conway and Arkansas). Lee County reported a 2.03% signature mismatch rate in 2016, but 0% in both 2018 and 2020.

Some of this, undoubtedly, reflects differing administrative and reporting practices across the state. But it also likely reflects differential application of discretion in both signature matching and in other aspects of election administration. There is no reason to believe the signature matching process for absentee ballot applications will be any less subjective or error prone than what is observed in other states and in signature matching for absentee ballot submissions in Arkansas. If anything, the more restrictive signature matching process, which requires matching to a *single* signature on file when a voter registered, will increase the error rate on rejections.

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<sup>39</sup> In California, for example, Janover and Westphal (2020) find county-level variation in (1) the use of automated scanners to compare signatures; (2) the number of people who evaluate signatures; (3) single-level vs. multiple-level reviews; (3) whether a county has a presumption that a signature matches; (4) how counties handle individuals who cannot sign their names; (5) how training is conducted; and (6) how challenges are handled.

Crucially, however, even if I accept the logic of the overall suite of election administrative changes made to Arkansas law in 2021 through the Challenged Provisions – that tightened standards are necessary to ensure the integrity of the electoral process – a more restrictive signature matching requirement for absentee ballot applications makes no sense. Signature matching is an inherently error-prone method of authentication voter identity. And if voters must submit a copy of a photo ID with their ballot in any event, a signature matching requirement in the absentee ballot application is superfluous.

To return to the language of administrative burden, the absentee application signature matching requirement is pure deadweight: a requirement that does nothing to actually increase the security of elections, but imposes an additional step that voters must take for no real purpose, and which provides an additional mechanism by which ballots can be rejected.

## **VI. Conclusions**

Taken together, the changes to election administration and voting practices made in 2021 through the Challenged Provisions add significantly to the difficulty of voting in a state that already had one of the most – if not the most – restrictive voting regimes in the U.S.

Arkansas had, even prior to these changes, some of the lowest turnout percentages in the U.S., as measured by the share of the voting eligible population that cast ballots. This pattern occurs not just for the population as a whole, but also among African American voters. The high cost of voting in Arkansas, particularly for certain populations, is also reflected in the strong relationship between county-level turnout and poverty and educational attainment.

The additional requirements under the Challenged Provisions – providing a picture of a photo ID along with a mailed absentee ballot; a stricter signature matching requirement for absentee ballot applications; changing the deadline for in-person submission of absentee ballots from the day before an election to the Friday before the election; eliminating the affidavit exception to the state’s voter ID law; banning anyone not voting or there for some other “lawful purpose” from being within 100 feet of a polling place – all serve to increase the cost of voting. Furthermore, the requirements add additional complexity and opportunities for unequal application of discretion by election officials around the state.

The requirements, moreover, do nothing to enhance the security or integrity of elections in Arkansas, as there is no evidence of any material levels of fraud or other irregularities, or any evidence that any of the Challenged Provisions would - or could - be effective in combatting voter fraud.

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- DeCrescenzo, Michael G. and Kenneth R. Mayer. 2019. "Voter Identification and Nonvoting in Wisconsin – Evidence from the 2016 Election." *Election Law Journal* 18:342-359.

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- Shah, Paru and Amber Wichowsky. 2019. "Foreclosure's Fallout: Economic Adversity and Voter Turnout." *Political Behavior* 41:1099-1115.
- Sondheimer, Rachel Milstein and Donald P. Green. 2010. "Using Experiments to Estimate the Effects of Education on Voter Turnout." *American Journal of Political Science* 54:174-189.
- Stein, Robert M., Christopher Mann, and Charles Stewart, III. 2019. "Waiting to Vote in the 2016 Presidential Election: Evidence from a Multi-county Study." *Political Research Quarterly* 73:439-453.
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- White, Ariel R., Noah L. Nathan and Julie K. Faller. 2015. "What Do I Need to Vote? Bureaucratic Discretion and Discrimination by Local Election Officials." *American Political Science Review* 109:129-142.

## Appendix A – Curriculum Vitae

### Kenneth R. Mayer

Department of Political Science  
Affiliate, La Follette School of Public Affairs  
110 North Hall / 1050 Bascom Mall  
University of Wisconsin – Madison  
Madison, WI 53706

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#### Education

Yale University, Department of Political Science, Ph.D., 1988.  
Yale University, Department of Political Science, M.A., M.Phil., 1987.  
University of California, San Diego, Department of Political Science, B.A., 1982.

#### Positions Held

University of Wisconsin, Madison. Department of Political Science.  
Professor, July 2000-present.  
Associate Professor, June 1996-June 2000.  
Assistant Professor, August 1989-May 1996.  
Fulbright-ANU Distinguished Chair in Political Science, Australian National University (Canberra, ACT), July-December 2006.  
Director, Data and Computation Center, College of Letters and Science, University of Wisconsin-Madison, June 1996-September 2003  
Consultant, The RAND Corporation, Washington DC, 1988-1994. Conducted study of acquisition reform, and the effects of acquisition policy on the defense industrial base. Performed computer simulations of U.S. strategic force posture and capabilities.  
Contract Specialist, Naval Air Systems Command, Washington D.C., 1985-1986. Responsible for cost and price analysis, contract negotiation, and contract administration for aerial target missile programs in the \$5 million - \$100 million range.

#### Awards

American Political Science Association, State Politics and Policy Section. Award for best Journal Article Published in the *American Journal of Political Science* in 2014. Awarded for Burden, Canon, Mayer, and Moynihan, "Election Laws, Mobilization, and Turnout."  
Robert H. Durr Award, from the Midwest Political Science Association, for Best Paper Applying Quantitative Methods to a Substantive Problem Presented at the 2013 Meeting. Awarded for Burden, Canon, Mayer, and Moynihan, "Election Laws and Partisan Gains."  
Leon Epstein Faculty Fellow, College of Letters and Science, 2012-2015  
UW Housing Honored Instructor Award, 2012, 2014, 2017, 2018  
Recipient, Jerry J. and Mary M. Cotter Award, College of Letters and Science, 2011-2012  
Alliant Underkofler Excellence in Teaching Award, University of Wisconsin System, 2006  
Pi Sigma Alpha Teaching Award, Fall 2006  
Vilas Associate, 2003-2004, University of Wisconsin-Madison Graduate School.  
2002 Neustadt Award. Awarded by the Presidency Research Group of the American Political Science Association, for the best book published on the American presidency in 2001. Awarded for *With the Stroke of a Pen: Executive Orders and Presidential Power*.  
Lilly Teaching Fellow, University of Wisconsin-Madison, 1993-1994.  
Interfraternity Council award for Outstanding Teaching, University of Wisconsin-Madison, 1993.  
Selected as one of the 100 best professors at University of Wisconsin-Madison, Wisconsin Student



Association, March 1992.  
Olin Dissertation Fellow, Center for International Affairs, Harvard University, 1987-1988

### **Service as an Expert Witness**

1. *League of Women Voters of Florida, Inc., et al. v. Lee, et al.*, Case No. 4:21-cv-00186-MW-MAF (N.D. Fla.) voting rights (2021)
2. *Fair Fight Inc., et al. v. True the Vote, Inc., et al.*, Case No. 2:20-CV-00302-SCJ (N.D. GA), election administration (2021).
3. *Majority Forward and Gamliel Warren Turner, Sr. v. Ben Hill County Board of Elections, et al.*, No. 1:20-CV-00266-LAG (M.D. Ga), election administration (2020).
4. *Pearson et al. v. Kemp et al.*, No. 1:20-cv-4809-TCB (N.D. Ga), election administration (2020)
5. *North Carolina Alliance for Retired Americans et al. v. North Carolina State Board of Elections* (Wake Cty., NC), absentee ballots (2020).
6. *LaRose et al. v. Simon*, No. 62-CV-20-3149 (2d Jud. Dist. Ct., Ramsey Cty., MN), absentee ballots (2020).
7. *Michigan Alliance for Retired Americans et al. v. Benson et al.* No 2020-000108-MM (Mich. Court of Claims), absentee ballots (2020).
8. *The New Georgia Project et al. v. Raffensperger et al.* No. 1:20-CV-01986-EL0052 (N.D. Ga.), absentee ballots (2020).
9. *Driscoll v. Stapleton*, No. DV 20 0408 (13<sup>th</sup> Judicial Ct. Yellowstone Cty., MT), absentee ballots (2020).
10. *The Andrew Goodman Foundation v. Bostelmann*, No. 19-cv-955 (W.D. Wisc.), voter ID (2020).
11. *Kumar v. Frisco Independent School District et al.*, No. 4:19-cv-00284 (E.D. Tex.), voting rights (2019).
12. *Fair Fight Action v. Raffensperger* No. 1:18-cv-05391-SCJ (N.D. Ga.), voting rights (2019)
13. *Vaughan v. Lewisville Independent School District*, No. 4:19-cv-00109 (E.D. Texas), voting rights (2019).
14. *Dwight et al. v. Raffensperger*, No: 1:18-cv-2869-RWS (N.D. Ga.), redistricting, voting rights (2018).
15. *Priorities U.S.A. et al. v. Missouri et al.*, No. 19AC-CC00226 (Cir. Ct. of Cole Cty., MO), voter ID (2018).
16. *Tyson v. Richardson Independent School District*, No. 3:18-cv-00212 (N.D. Texas), voting rights (2018).
17. *League of Women Voters of Michigan, et al. v. Johnson*, No. 2:17-cv-14148-DPH-SDD (S.D. Mich.), redistricting (2018).
18. *One Wisconsin Institute, Inc., et al. v. Nichol, et al.*, 198 F. Supp. 3d 896 (W.D. Wis.), voting rights (2016).
19. *Whitford et al. v. Gill et al*, 218 F. Supp. 3d 837, (W.D. Wis.), redistricting (2016).
20. *Milwaukee NAACP et al. v. Scott Walker et. al*, N.W.2d 262 (Wis. 2014), voter ID (2012).
21. *Baldus et al. v. Brennan et al.*, 849 F. Supp. 2d 840 (E.D. Wis.), redistricting, voting rights (2012).
22. *County of Kenosha v. City of Kenosha*, No. 22-CV-1813 (Wis. Cir. Ct., Kenosha Cty.) municipal redistricting (2011).
23. *McComish et al. v. Brewer et al.*, 2010 WL 2292213 (D. Ariz.), campaign finance (2009).
24. *Baumgart et al. v. Wendelberger et al.*, 2002 WL 34127471 (E.D. Wis.), redistricting (2002).

### **Grants**

“A Multidisciplinary Approach for Redistricting Knowledge.” Principal Investigator. Co-PIs Adeline Lo (UW Madison, Department of Political Science), Song Gao (UW Madison, Department of Geography), and Barton Miller and Jin-Yi Cai (UW Madison, Department of Computer Sciences). University of Wisconsin Alumni Research Foundation (WARF), and UW Madison

Office of the Vice Chancellor for Research and Graduate Education. July 1, 2020-June 30, 2022. \$410,711.

“Analyzing Nonvoting and the Student Voting Experience in Wisconsin.” Dane County (WI) Clerk, \$44,157. November 2016-December 2017. Additional support (\$30,000) provided by the Office of the Chancellor, UW-Madison.

Campaign Finance Task Force, Stanford University and New York University, \$36,585. September 2016-August 2017.

Participant and Board Member, 2016 White House Transition Project, PIs Martha Joynt Kumar (Towson State University) and Terry Sullivan (University of North Carolina-Chapel Hill).

“How do You Know? The Structure of Presidential Advising and Error Correction in the White House.” Graduate School Research Committee, University of Wisconsin, \$18,941. July 1, 2015-June 30, 2016.

“Study and Recommendations for the Government Accountability Board Chief Inspectors’ Statements and Election Incident Report Logs.” \$43,234. Co-PI. With Barry C. Burden (PI), David T. Canon (co-PI), and Donald Moynihan (co-PI). October 2011-May 2012.

“Public Funding in Connecticut Legislative Elections.” Open Society Institute. September 2009-December 2010. \$55,000.

“Early Voting and Same Day Registration in Wisconsin and Beyond.” Co-PI. October 2008- September 2009. Pew Charitable Trusts. \$49,400. With Barry C. Burden (PI), David T. Canon (Co-PI), Kevin J. Kennedy (Co-PI), and Donald P. Moynihan (Co-PI).

City of Madison, Blue Ribbon Commission on Clean Elections. Joyce Foundation, Chicago, IL. \$16,188. January-July 2008.

“Wisconsin Campaign Finance Project: Public Funding in Connecticut State Legislative Elections.” JEHT Foundation, New York, NY. \$84,735. November 2006-November 2007.

“Does Public Election Funding Change Public Policy? Evaluating the State of Knowledge.” JEHT Foundation, New York, NY. \$42,291. October 2005-April 2006.

“Wisconsin Campaign Finance Project: Disseminating Data to the Academic, Reform, and Policy Communities.” Joyce Foundation, Chicago, IL. \$20,900. September 2005- August 2006.

“Enhancing Electoral Competition: Do Public Funding Programs for State and Local Elections Work?” Smith Richardson Foundation, Westport, CT. \$129,611. December 2002-June 2005

WebWorks Grant (implementation of web-based instructional technologies), Division of Information Technology, UW-Madison, \$1,000. November 1999.

“Issue Advocacy in Wisconsin during the 1998 Election.” Joyce Foundation, Chicago, IL. \$15,499. April 1999.

Instructional Technology in the Multimedia Environment (IN-TIME) grant, Learning Support Services, University of Wisconsin. \$5,000. March 1997.

“Public Financing and Electoral Competitiveness in the Minnesota State Legislature.” Citizens’ Research Foundation, Los Angeles, CA, \$2,000. May-November 1996.

“The Reach of Presidential Power: Policy Making Through Executive Orders.” National Science Foundation (SBR-9511444), \$60,004. September 1, 1995-August 31, 1998. Graduate School Research Committee, University of Wisconsin, \$21,965. Additional support provided by the Gerald R. Ford Library Foundation, the Eisenhower World Affairs Institute, and the Harry S. Truman Library Foundation.

The Future of the Combat Aircraft Industrial Base.” Changing Security Environment Project, John M. Olin Institute for Strategic Studies, Harvard University (with Ethan B. Kapstein). June 1993-January 1995. \$15,000.

Hilldale Student Faculty Research Grant, College of Letters and Sciences, University of Wisconsin (with John M. Wood). 1992. \$1,000 (\$3,000 award to student)

“Electoral Cycles in Federal Government Prime Contract Awards” March 1992 – February 1995. National Science Foundation (SES-9121931), \$74,216. Graduate School Research Committee at the University of Wisconsin, \$2,600. MacArthur Foundation, \$2,500.

C-SPAN In the Classroom Faculty Development Grant, 1991. \$500

### **Professional and Public Service**

Education and Social and Behavioral Sciences Institutional Review Board, 2008-2014. Acting Chair, Summer 2011. Chair, May 2012- June 2014.

Participant, U.S. Public Speaker Grant Program. United States Department of State (nationwide speaking tour in Australia, May 11-June 2, 2012).

Expert Consultant, Voces de la Frontera. Milwaukee Aldermanic redistricting, (2011).

Expert Consultant, Prosser for Supreme Court. Wisconsin Supreme Court election recount (2011).

Chair, Blue Ribbon Commission on Clean Elections (Madison, WI), August 2007-April 2011.

Consultant, Consulate of the Government of Japan (Chicago) on state politics in Illinois, Indiana, Minnesota, and Wisconsin, 2006-2011.

Section Head, Presidency Studies, 2006 Annual Meeting of the American Political Science Association.

Co-Chair, Committee on Redistricting, Supreme Court of Wisconsin, November 2003-December 2009.

Section Head, Presidency and Executive Politics, 2004 Annual Meeting of the Midwest Political Science Association, Chicago, IL.

Presidency Research Group (organized section of the American Political Science Association) Board, September 2002-present.

Book Review Editor, *Congress and the Presidency*, 2001-2006.

Editorial Board, *American Political Science Review*, September 2004-September 2007.

Consultant, Governor's Blue Ribbon Commission on Campaign Finance Reform (Wisconsin), 1997.

### **PUBLICATIONS**

#### **Books**

*Presidential Leadership: Politics and Policymaking*, 12<sup>th</sup> edition. Lanham, MD: Rowman and Littlefield, forthcoming 2022. With George C. Edwards, III and Steven J. Wayne. Previous editions 10<sup>th</sup> (2018), 11<sup>th</sup> (2020).

*The 2016 Presidential Elections: The Causes and Consequences of an Electoral Earthquake*. Lanham, MD: Lexington Press, 2017. Co-edited with Amnon Cavari and Richard J. Powell.

*The Enduring Debate: Classic and Contemporary Readings in American Government*. 8<sup>th</sup> ed. New York: W.W. Norton & Co. 2017. Co-edited with David T. Canon and John Coleman. Previous editions 1<sup>st</sup> (1997), 2<sup>nd</sup> (2000), 3<sup>rd</sup> (2002), 4<sup>th</sup> (2006), 5<sup>th</sup> (2009), 6<sup>th</sup> (2011), 7<sup>th</sup> (2013).

*Faultlines: Readings in American Government*, 5<sup>th</sup> ed. New York: W.W. Norton & Co. 2017. Co-edited with David T. Canon and John Coleman. Previous editions 1<sup>st</sup> (2004), 2<sup>nd</sup> (2007), 3<sup>rd</sup> (2011), 4<sup>th</sup> (2013).

*The 2012 Presidential Election: Forecasts, Outcomes, and Consequences*. Lanham, MD: Rowman and Littlefield, 2014. Co-edited with Amnon Cavari and Richard J. Powell.

*Readings in American Government*, 7<sup>th</sup> edition. New York: W.W. Norton & Co. 2002. Co-edited with Theodore J. Lowi, Benjamin Ginsberg, David T. Canon, and John Coleman). Previous editions 4<sup>th</sup> (1996), 5<sup>th</sup> (1998), 6<sup>th</sup> (2000).

*With the Stroke of a Pen: Executive Orders and Presidential Power*. Princeton, NJ: Princeton University Press. 2001. Winner of the 2002 Neustadt Award from the Presidency Studies Group of the American Political Science Association, for the Best Book on the Presidency Published in 2001.

*The Dysfunctional Congress? The Individual Roots of an Institutional Dilemma*. Boulder, CO: Westview Press. 1999. With David T. Canon.

*The Political Economy of Defense Contracting*. New Haven: Yale University Press. 1991.

#### **Monographs**

*2008 Election Data Collection Grant Program: Wisconsin Evaluation Report*. Report to the Wisconsin

- Government Accountability Board, September 2009. With Barry C. Burden, David T. Canon, Stéphane Lavertu, and Donald P. Moynihan.
- Issue Advocacy in Wisconsin: Analysis of the 1998 Elections and A Proposal for Enhanced Disclosure.* September 1999.
- Public Financing and Electoral Competition in Minnesota and Wisconsin.* Citizens' Research Foundation, April 1998.
- Campaign Finance Reform in the States.* Report prepared for the Governor's Blue Ribbon Commission on Campaign Finance Reform (State of Wisconsin). February 1998. Portions reprinted in Anthony Corrado, Thomas E. Mann, Daniel Ortiz, Trevor Potter, and Frank J. Sorauf, ed., *Campaign Finance Reform: A Sourcebook.* Washington, D.C.: Brookings Institution, 1997.
- "Does Public Financing of Campaigns Work?" *Trends in Campaign Financing.* Occasional Paper Series, Citizens' Research Foundation, Los Angeles, CA. 1996. With John M. Wood.
- The Development of the Advanced Medium Range Air-to-Air Missile: A Case Study of Risk and Reward in Weapon System Acquisition.* N-3620-AF. Santa Monica: RAND Corporation. 1993.
- Barriers to Managing Risk in Large Scale Weapons System Development Programs.* N-4624-AF. Santa Monica: RAND Corporation. 1993. With Thomas K. Glennan, Jr., Susan J. Bodilly, Frank Camm, and Timothy J. Webb.

## Articles

- "The Random Walk Presidency," *Presidential Studies Quarterly* 51: 71-95 (2021)
- "Voter Identification and Nonvoting in Wisconsin - Evidence from the 2016 Election." *Election Law Journal* 18:342-359 (2019). With Michael DeCrescenzo.
- "Waiting to Vote in the 2016 Presidential Election: Evidence from a Multi-county Study." *Political Research Quarterly* 71 (2019). With Robert M. Stein, Christopher Mann, Charles Stewart III, et al.
- "Learning from Recounts." *Election Law Journal* 17:100-116 (No. 2, 2018). With Stephen Ansolabehere, Barry C. Burden, and Charles Stewart, III.
- "The Complicated Partisan Effects of State Election Laws." *Political Research Quarterly* 70:549-563 (No. 3, September 2017). With Barry C. Burden, David T. Canon, and Donald P. Moynihan.
- "What Happens at the Polling Place: Using Administrative Data to Look Inside Elections." *Public Administration Review* 77:354-364 (No. 3, May/June 2017). With Barry C. Burden, David T. Canon, Donald P. Moynihan, and Jacob R. Neihsel.
- "Alien Abduction, and Voter Impersonation in the 2012 U.S. General Election: Evidence from a Survey List Experiment." *Election Law Journal* 13:460-475 No.4, December 2014). With John S. Ahlquist and Simon Jackman.
- "Election Laws, Mobilization, and Turnout: The Unanticipated Consequences of Election Reform." *American Journal of Political Science*, 58:95-109 (No. 1, January 2014). With Barry C. Burden, David T. Canon, and Donald P. Moynihan. Winner of the State Politics and Politics Section of the American Political Science Association Award for the best article published in the *AJPS* in 2014.
- "Executive Power in the Obama Administration and the Decision to Seek Congressional Authorization for a Military Attack Against Syria: Implications for Theories of Unilateral Action." *Utah Law Review* 2014:821-841 (No. 4, 2014).
- "Public Election Funding: An Assessment of What We Would Like to Know." *The Forum* 11:365-485 (No. 3, 2013).
- "Selection Method, Partisanship, and the Administration of Elections." *American Politics Research* 41:903-936 (No. 6, November 2013). With Barry C. Burden, David T. Canon, Stéphane Lavertu, and Donald Moynihan.
- "The Effect of Administrative Burden on Bureaucratic Perception of Policies: Evidence from Election Administration." *Public Administration Review* 72:741-451 (No. 5, September/October 2012). With Barry C. Burden, David T. Canon, and Donald Moynihan.

- "Early Voting and Election Day Registration in the Trenches: Local Officials' Perceptions of Election Reform." *Election Law Journal* 10:89-102 (No. 2, 2011). With Barry C. Burden, David T. Canon, and Donald Moynihan.
- "Is Political Science Relevant? Ask an Expert Witness," *The Forum*: Vol. 8, No. 3, Article 6 (2010).
- "Thoughts on the Revolution in Presidency Studies," *Presidential Studies Quarterly* 39 (no. 4, December 2009).
- "Does Australia Have a Constitution? Part I – Powers: A Constitution Without Constitutionalism." *UCLA Pacific Basin Law Journal* 25:228-264 (No. 2, Spring 2008). With Howard Schweber.
- "Does Australia Have a Constitution? Part II: The Rights Constitution." *UCLA Pacific Basin Law Journal* 25:265-355 (No. 2, Spring 2008). With Howard Schweber.
- "Public Election Funding, Competition, and Candidate Gender." *PS: Political Science and Politics* XL:661-667 (No. 4, October 2007). With Timothy Werner.
- "Do Public Funding Programs Enhance Electoral Competition?" In Michael P. McDonald and John Samples, eds., *The Marketplace of Democracy: Electoral Competition and American Politics* (Washington, DC: Brookings Institution Press, 2006). With Timothy Werner and Amanda Williams. Excerpted in Daniel H. Lowenstein, Richard L. Hasen, and Daniel P. Tokaji, *Election Law: Cases and Materials*. Durham, NC: Carolina Academic Press, 2008.
- "The Last 100 Days." *Presidential Studies Quarterly* 35:533-553 (No. 3, September 2005). With William Howell.
- "Political Reality and Unforeseen Consequences: Why Campaign Finance Reform is Too Important To Be Left To The Lawyers," *University of Richmond Law Review* 37:1069-1110 (No. 4, May 2003).
- "Unilateral Presidential Powers: Significant Executive Orders, 1949-1999." *Presidential Studies Quarterly* 32:367-386 (No. 2, June 2002). With Kevin Price.
- "Answering Ayres: Requiring Campaign Contributors to Remain Anonymous Would Not Resolve Corruption Concerns." *Regulation* 24:24-29 (No. 4, Winter 2001).
- "Student Attitudes Toward Instructional Technology in the Large Introductory US Government Course." *PS: Political Science and Politics* 33:597-604 (No. 3 September 2000). With John Coleman.
- "The Limits of Delegation – the Rise and Fall of BRAC." *Regulation* 22:32-38 (No. 3, October 1999).
- "Executive Orders and Presidential Power." *The Journal of Politics* 61:445-466 (No.2, May 1999).
- "Bringing Politics Back In: Defense Policy and the Theoretical Study of Institutions and Processes." *Public Administration Review* 56:180-190 (1996). With Anne Khademian.
- "Closing Military Bases (Finally): Solving Collective Dilemmas Through Delegation." *Legislative Studies Quarterly*, 20:393-414 (No. 3, August 1995).
- "Electoral Cycles in Federal Government Prime Contract Awards: State-Level Evidence from the 1988 and 1992 Presidential Elections." *American Journal of Political Science* 40:162-185 (No. 1, February 1995).
- "The Impact of Public Financing on Electoral Competitiveness: Evidence from Wisconsin, 1964-1990." *Legislative Studies Quarterly* 20:69-88 (No. 1, February 1995). With John M. Wood.
- "Policy Disputes as a Source of Administrative Controls: Congressional Micromanagement of the Department of Defense." *Public Administration Review* 53:293-302 (No. 4, July-August 1993).
- "Combat Aircraft Production in the United States, 1950-2000: Maintaining Industry Capability in an Era of Shrinking Budgets." *Defense Analysis* 9:159-169 (No. 2, 1993).

### **Book Chapters**

- "Is President Trump Conventionally Disruptive, or Unconventionally Destructive?" In *The 2016 Presidential Elections: The Causes and Consequences of an Electoral Earthquake*. Lanham, MD: Lexington Press, 2017. Co-edited with Amon Cavari and Richard J. Powell.
- "Lessons of Defeat: Republican Party Responses to the 2012 Presidential Election. In Amnon Cavari, Richard J. Powell, and Kenneth R. Mayer, eds. *The 2012 Presidential Election: Forecasts,*

- Outcomes, and Consequences*. Lanham, MD: Rowman and Littlefield. 2014.
- “Unilateral Action.” George C. Edwards, III, and William G. Howell, *Oxford Handbook of the American Presidency* (New York: Oxford University Press, 2009).
- “Executive Orders,” in Joseph Bessette and Jeffrey Tulis, *The Constitutional Presidency*. Baltimore: Johns Hopkins University Press, 2009.
- “Hey, Wait a Minute: The Assumptions Behind the Case for Campaign Finance Reform.” In Gerald C. Lubenow, ed., *A User’s Guide to Campaign Finance Reform*. Lanham, MD: Rowman & Littlefield, 2001.
- “Everything You Thought You Knew About Impeachment Was Wrong.” In Leonard V. Kaplan and Beverly I. Moran, ed., *Aftermath: The Clinton Impeachment and the Presidency in the Age of Political Spectacle*. New York: New York University Press. 2001. With David T. Canon.
- “The Institutionalization of Power.” In Robert Y. Shapiro, Martha Joynt Kumar, and Lawrence R. Jacobs, eds. *Presidential Power: Forging the Presidency for the 21<sup>st</sup> Century*. New York: Columbia University Press, 2000. With Thomas J. Weko.
- “Congressional-DoD Relations After the Cold War: The Politics of Uncertainty.” In *Downsizing Defense*, Ethan Kapstein ed. Washington DC: Congressional Quarterly Press. 1993.
- “Elections, Business Cycles, and the Timing of Defense Contract Awards in the United States.” In Alex Mintz, ed. *The Political Economy of Military Spending*. London: Routledge. 1991.
- “Patterns of Congressional Influence In Defense Contracting.” In Robert Higgs, ed., *Arms, Politics, and the Economy: Contemporary and Historical Perspectives*. New York: Holmes and Meier. 1990.

### Other

- “Campaign Finance: Some Basics.” Bauer-Ginsberg Campaign Finance Task Force, Stanford University. September 2017. With Elizabeth M. Sawyer.
- “The Wisconsin Recount May Have a Surprise in Store after All.” *The Monkey Cage* (Washington Post), December 5, 2016. With Stephen Ansolabehere, Barry C. Burden, and Charles Stewart, III.
- Review of Jason K. Dempsey, *Our Army: Soldiers, Politicians, and American Civil-Military Relations*. *The Forum* 9 (No. 3, 2011).
- “Voting Early, but Not Often.” *New York Times*, October 25, 2010. With Barry C. Burden.
- Review of John Samples, *The Fallacy of Campaign Finance Reform* and Raymond J. La Raja, *Small Change: Money, Political Parties, and Campaign Finance Reform*. *The Forum* 6 (No. 1, 2008).
- Review Essay, *Executing the Constitution: Putting the President Back Into the Constitution*, Christopher S. Kelley, ed.; *Presidents in Culture: The Meaning of Presidential Communication*, David Michael Ryfe; *Executive Orders and the Modern Presidency: Legislating from the Oval Office*, Adam L. Warber. In *Perspective on Politics* 5:635-637 (No. 3, September 2007).
- “The Base Realignment and Closure Process: Is It Possible to Make Rational Policy?” Brademas Center for the Study of Congress, New York University. 2007.
- “Controlling Executive Authority in a Constitutional System” (comparative analysis of executive power in the U.S. and Australia), manuscript, February 2007.
- “Campaigns, Elections, and Campaign Finance Reform.” *Focus on Law Studies*, XXI, No. 2 (Spring 2006). American Bar Association, Division for Public Education.
- “Review Essay: Assessing The 2000 Presidential Election – Judicial and Social Science Perspectives.” *Congress and the Presidency* 29: 91-98 (No. 1, Spring 2002).
- Issue Briefs (Midterm Elections, Homeland Security; Foreign Affairs and Defense Policy; Education; Budget and Economy; Entitlement Reform) *2006 Reporter’s Source Book*. Project Vote Smart. 2006. With Meghan Condon.
- “Sunlight as the Best Disinfectant: Campaign Finance in Australia.” Democratic Audit of Australia, Australian National University. October 2006.
- “Return to the Norm,” *Brisbane Courier-Mail*, November 10, 2006.
- “The Return of the King? Presidential Power and the Law,” *PRG Report XXVI*, No. 2 (Spring 2004).
- Issue Briefs (Campaign Finance Reform, Homeland Security; Foreign Affairs and Defense Policy;

- Education; Budget and Economy; Entitlement Reform), *2004 Reporter's Source Book*. Project Vote Smart. 2004. With Patricia Strach and Arnold Shober.
- "Where's That Crystal Ball When You Need It? Finicky Voters and Creaky Campaigns Made for a Surprise Electoral Season. And the Fun's Just Begun." *Madison Magazine*. April 2002.
- "Capitol Overkill." *Madison Magazine*, July 2002.
- Issue Briefs (Homeland Security; Foreign Affairs and Defense Policy; Education; Economy, Budget and Taxes; Social Welfare Policy), *2002 Reporter's Source Book*. Project Vote Smart. 2002. With Patricia Strach and Paul Manna.
- "Presidential Emergency Powers." *Oxford Analytica Daily Brief*. December 18, 2001.
- "An Analysis of the Issue of Issue Ads." *Wisconsin State Journal*, November 7, 1999.
- "Background of Issue Ad Controversy." *Wisconsin State Journal*, November 7, 1999.
- "Eliminating Public Funding Reduces Election Competition." *Wisconsin State Journal*, June 27, 1999.
- Review of *Executive Privilege: The Dilemma of Secrecy and Democratic Accountability*, by Mark J. Rozell. *Congress and the Presidency* 24 (No. 1, 1997).
- "Like Marriage, New Presidency Starts In Hope." *Wisconsin State Journal*. March 31, 1996.
- Review of *The Tyranny of the Majority: Fundamental Fairness in Representative Democracy*, by Lani Guinier. *Congress and the Presidency* 21: 149-151 (No. 2, 1994).
- Review of *The Best Defense: Policy Alternatives for U.S. Nuclear Security From the 1950s to the 1990s*, by David Goldfischer. *Science, Technology, and Environmental Politics Newsletter* 6 (1994).
- Review of *The Strategic Defense Initiative*, by Edward Reiss. *American Political Science Review* 87:1061-1062 (No. 4, December 1993).
- Review of *The Political Economy of Defense: Issues and Perspectives*, Andrew L. Ross ed. *Armed Forces and Society* 19:460-462 (No. 3, April 1993).
- Review of *Space Weapons and the Strategic Defense Initiative*, by Crockett Grabbe. *Annals of the American Academy of Political and Social Science* 527: 193-194 (May 1993).
- "Limits Wouldn't Solve the Problem." *Wisconsin State Journal*, November 5, 1992. With David T. Canon.
- "Convention Ceded Middle Ground." *Wisconsin State Journal*, August 23, 1992.
- "CBS Economy Poll Meaningless." *Wisconsin State Journal*, February 3, 1992.
- "It's a Matter of Character: Pentagon Doesn't Need New Laws, it Needs Good People." *Los Angeles Times*, July 8, 1988.

### **Conference Papers**

- "Voter Identification and Nonvoting in Wisconsin – Evidence from the 2016 Election." Presented at the 2018 Annual Meeting of the Midwest Political Science Association, Chicago, IL April 5-8, 2018. With Michael G. DeCrescenzo.
- "Learning from Recounts." Presented at the Workshop on Electoral Integrity, San Francisco, CA, August 30, 2017, and at the 2017 Annual Meeting of the American Political Science Association, San Francisco, CA, August 31-September 3, 2017. With Stephen Ansolabehere, Barry C. Burden, and Charles Stewart, III.
- "What Happens at the Polling Place: Using Administrative Data to Understand Irregularities at the Polls." Conference on New Research on Election Administration and Reform, Massachusetts Institute of Technology, Cambridge, MA, June 8, 2015. With Barry C. Burden, David T. Canon, Donald P. Moynihan, and Jake R. Neihsel.
- "Election Laws and Partisan Gains: What are the Effects of Early Voting and Same Day Registration on the Parties' Vote Shares." 2013 Annual Meeting of the Midwest Political Science Association, Chicago, IL, April 11-14, 2013. Winner of the Robert H. Durr Award.
- "The Effect of Public Funding on Electoral Competition: Evidence from the 2008 and 2010 Cycles." Annual Meeting of the American Political Science Association, Seattle, WA, September 1-4, 2011. With Amnon Cavari.
- "What Happens at the Polling Place: A Preliminary Analysis in the November 2008 General Election."

- Annual Meeting of the American Political Science Association, Seattle, WA, September 1-4, 2011. With Barry C. Burden, David T. Canon, Donald P. Moynihan, and Jake R. Neiheisel.
- “Election Laws, Mobilization, and Turnout: The Unanticipated Consequences of Election Reform.” 2010 Annual Meeting of the American Political Science Association, Washington, DC, September 2-5, 2010. With Barry C. Burden, David T. Canon, Stéphane Lavertu and Donald P. Moynihan.
- “Selection Methods, Partisanship, and the Administration of Elections. Annual Meeting of the Midwest Political Science Association, Chicago, IL, April 22-25, 2010. Revised version presented at the Annual Meeting of the European Political Science Association, June 16-19, 2011, Dublin, Ireland. With Barry C. Burden, David T. Canon, Stéphane Lavertu and Donald P. Moynihan.
- “The Effects and Costs of Early Voting, Election Day Registration, and Same Day Registration in the 2008 Elections.” Annual Meeting of the American Political Science Association, Toronto, Canada, September 3-5, 2009. With Barry C. Burden, David T. Canon, and Donald P. Moynihan.
- “Comparative Election Administration: Can We Learn Anything From the Australian Electoral Commission?” Annual Meeting of the American Political Science Association, Chicago, IL, August 29-September 1, 2007.
- “Electoral Transitions in Connecticut: Implementation of Public Funding for State Legislative Elections.” Annual Meeting of the American Political Science Association, Chicago, IL, August 29-September 1, 2007. With Timothy Werner.
- “Candidate Gender and Participation in Public Campaign Finance Programs.” Annual Meeting of the Midwest Political Science Association, Chicago IL, April 7-10, 2005. With Timothy Werner.
- “Do Public Funding Programs Enhance Electoral Competition?” 4<sup>th</sup> Annual State Politics and Policy Conference,” Akron, OH, April 30-May 1, 2004. With Timothy Werner and Amanda Williams.
- “The Last 100 Days.” Annual Meeting of the American Political Science Association, Philadelphia, PA, August 28-31, 2003. With William Howell.
- “Hey, Wait a Minute: The Assumptions Behind the Case for Campaign Finance Reform.” Citizens’ Research Foundation Forum on Campaign Finance Reform, Institute for Governmental Studies, University of California Berkeley. August 2000.
- “The Importance of Moving First: Presidential Initiative and Executive Orders.” Annual Meeting of the American Political Science Association, San Francisco, CA, August 28-September 1, 1996.
- “Informational vs. Distributive Theories of Legislative Organization: Committee Membership and Defense Policy in the House.” Annual Meeting of the American Political Science Association, Washington, DC, September 2-5, 1993.
- “Department of Defense Contracts, Presidential Elections, and the Political-Business Cycle.” Annual Meeting of the American Political Science Association, Washington, DC, September 2-5, 1993.
- “Problem? What Problem? Congressional Micromanagement of the Department of Defense.” Annual Meeting of the American Political Science Association, Washington DC, August 29 - September 2, 1991.

### **Talks and Presentations**

- “Turnout Effects of Voter ID Laws.” Rice University, March 23, 2018; Wisconsin Alumni Association, October 13, 2017. With Michael DeCrescenzo.
- “Informational and Turnout Effects of Voter ID Laws.” Wisconsin State Elections Commission, December 12, 2017; Dane County Board of Supervisors, October 26, 2017. With Michael DeCrescenzo.
- “Voter Identification and Nonvoting in Wisconsin, Election 2016. American Politics Workshop, University of Wisconsin, Madison, November 24, 2017.
- “Gerrymandering: Is There A Way Out?” Marquette University. October 24, 2017.
- “What Happens in the Districting Room and What Happens in the Courtroom” Geometry of Redistricting Conference, University of Wisconsin-Madison October 12, 2017.
- “How Do You Know? The Epistemology of White House Knowledge.” Clemson University, February 23, 2016.



Roundtable Discussant, Separation of Powers Conference, School of Public and International Affairs, University of Georgia, February 19-20, 2016.

Campaign Finance Task Force Meeting, Stanford University, February 4, 2016.

Discussant, "The Use of Unilateral Powers." American Political Science Association Annual Meeting, August 28-31, 2014, Washington, DC.

Presenter, "Roundtable on Money and Politics: What do Scholars Know and What Do We Need to Know?" American Political Science Association Annual Meeting, August 28-September 1, 2013, Chicago, IL.

Presenter, "Roundtable: Evaluating the Obama Presidency." Midwest Political Science Association Annual Meeting, April 11-14, 2012, Chicago, IL.

Panel Participant, "Redistricting in the 2010 Cycle," Midwest Democracy Network,

Speaker, "Redistricting and Election Administration," Dane County League of Women Voters, March 4, 2010.

Keynote Speaker, "Engaging the Electorate: The Dynamics of Politics and Participation in 2008." Foreign Fulbright Enrichment Seminar, Chicago, IL, March 2008.

Participant, Election Visitor Program, Australian Electoral Commission, Canberra, ACT, Australia. November 2007.

Invited Talk, "Public Funding in State and Local Elections." Reed College Public Policy Lecture Series. Portland, Oregon, March 19, 2007.

Fulbright Distinguished Chair Lecture Tour, 2006. Public lectures on election administration and executive power. University of Tasmania, Hobart (TAS); Flinders University and University of South Australia, Adelaide (SA); University of Melbourne, Melbourne (VIC); University of Western Australia, Perth (WA); Griffith University and University of Queensland, Brisbane (QLD); Institute for Public Affairs, Sydney (NSW); The Australian National University, Canberra (ACT).

Discussant, "Both Ends of the Avenue: Congress and the President Revisited," American Political Science Association Meeting, September 2-5, 2004, Chicago, IL.

Presenter, "Researching the Presidency," Short Course, American Political Science Association Meeting, September 2-5, 2004, Chicago, IL.

Discussant, Conference on Presidential Rhetoric, Texas A&M University, College Station, TX. February 2004.

Presenter, "Author Meets Author: New Research on the Presidency," 2004 Southern Political Science Association Meeting, January 8-11, New Orleans, LA.

Chair, "Presidential Secrecy," American Political Science Association Meeting, August 28-31, 2003, Philadelphia, PA.

Discussant, "New Looks at Public Approval of Presidents." Midwest Political Science Association Meeting, April 3-6, 2003, Chicago, IL.

Discussant, "Presidential Use of Strategic Tools." American Political Science Association Meeting, August 28-September 1, 2002, Boston, MA.

Chair and Discussant, "Branching Out: Congress and the President." Midwest Political Science Association Meeting, April 19-22, 2001, Chicago, IL.

Invited witness, Committee on the Judiciary, Subcommittee on Commercial and Administrative Law, U.S. House of Representatives. *Hearing on Executive Order and Presidential Power*, Washington, DC. March 22, 2001.

"The History of the Executive Order," Miller Center for Public Affairs, University of Virginia (with Griffin Bell and William Howell), January 26, 2001.

Presenter and Discussant, Future Voting Technologies Symposium, Madison, WI May 2, 2000.

Moderator, Panel on Electric Utility Reliability. Assembly Staff Leadership Development Seminar, Madison, WI. August 11, 1999.

Chair, Panel on "Legal Aspects of the Presidency: Clinton and Beyond." Midwest Political Science Association Meeting, April 15-17, 1999, Chicago, IL.

Session Moderator, National Performance Review Acquisition Working Summit, Milwaukee, WI. June 1995.

American Politics Seminar, The George Washington University, Washington D.C., April 1995.

Invited speaker, Defense and Arms Control Studies Program, Massachusetts Institute of Technology, Cambridge, MA, March 1994.

Discussant, International Studies Association (Midwest Chapter) Annual Meeting, Chicago IL, October 29-30, 1993.

Seminar on American Politics, Princeton University, January 16-17, 1992.

Conference on Defense Downsizing and Economic Conversion, October 4, 1991, Harvard University.

Conference on Congress and New Foreign and Defense Policy Challenges, The Ohio State University, Columbus OH, September 21-22, 1990, and September 19-21, 1991.

Presenter, "A New Look at Short Term Change in Party Identification," 1990 Meeting of the American Political Science Association, San Francisco, CA.

### **University and Department Service**

Cross-Campus Human Research Protection Program (HRPP) Advisory Committee, 2019-present.

UW Athletic Board, 2014-present.

General Education Requirements Committee (Letters and Science), 1997-1998.

Communications-B Implementation Committee (Letters and Science), 1997-1999

Verbal Assessment Committee (University) 1997-1998.

College of Letters & Science Faculty Appeals Committee (for students dismissed for academic reasons).

Committee on Information Technology, Distance Education and Outreach, 1997-98.

Hilldale Faculty-Student Research Grants, Evaluation Committee, 1997, 1998.

Department Computer Committee, 1996-1997; 1997-1998, 2005-2006. Chair, 2013-present.

Faculty Senate, 2000-2002, 2002-2005. Alternate, 1994-1995; 1996-1999; 2015-2016.

Preliminary Exam Appeals Committee, Department of Political Science, 1994-1995.

Faculty Advisor, Pi Sigma Alpha (Political Science Honors Society), 1993-1994.

Department Honors Advisor, 1991-1993.

Brown-bag Seminar Series on Job Talks (for graduate students), 1992.

Keynote speaker, Undergraduate Honors Symposium, April 13 1991.

Undergraduate Curriculum Committee, Department of Political Science, 1990-1992; 1993-1994.

Individual Majors Committee, College of Letters and Sciences, 1990-1991.

Dean Reading Room Committee, Department of Political Science, 1989-1990; 1994-1995.

### **Teaching**

#### **Undergraduate**

Introduction to American Government (regular and honors)

The American Presidency

Campaign Finance

Election Law

Presidential Debates

Comparative Electoral Systems

Legislative Process

Theories of Legislative Organization

Senior Honors Thesis Seminar

#### **Graduate**

Contemporary Presidency

American National Institutions

Classics of American Politics

Legislative Process

# EXHIBIT I

RETRIEVED FROM DEMOCRACYDOCKET.COM

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VIDEO FILE BATES NUMBERED: PL037505

ARKANSAS SECRETARY OF STATE

8

PRESS CONFERENCE ON H.R.1 AND ELECTION INTEGRITY

TUESDAY, MARCH 30, 2021

9

SPEAKERS: ARKANSAS SECRETARY OF STATE JOHN THURSTON,  
ARKANSAS ATTORNEY GENERAL LESLIE RUTLEDGE, CONGRESSMAN  
FRENCH HILL, SENATOR JOHN BOOZMAN, SENATOR TOM COTTON

10

SOURCE: A TRUE AND CORRECT COPY OF THIS VIDEO IS  
AVAILABLE AT: [HTTPS://YOUTUBE.COM/WATCH?V=YYE9XOF0M7S](https://youtube.com/watch?v=YYE9XOF0M7S)

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25 TRANSCRIBED BY: Abby Rhodes, CSR, RPR

1 overhaul the election process here in Arkansas.

2 In Arkansas, we have 75 county clerks. We  
3 have 225 Board of Election commissioners. We have 135  
4 legislatures. We have 9,000-plus election officials,  
5 and not to mention the voters who have voted on many  
6 ballot measures pertaining to how we vote in Arkansas.  
7 Here in Arkansas in 2020, despite the global pandemic,  
8 we had one of the most successful elections in state  
9 history.

10 I'd like to point out just a few items on  
11 this bill that I -- that I am troubled by. This bill  
12 would eliminate voter ID requirements that the State  
13 of Arkansas currently has in place which Arkansas  
14 voters voted to be in place.

15 Same-day voter registration would cause  
16 chaos at the polls. It would be impossible for poll  
17 workers to properly determine an individual's  
18 eligibility to vote. It would require states to count  
19 ballots by voters who cast a ballot outside of their  
20 assigned precinct. No excuse absentee would be  
21 allowed. Absentee ballots arriving ten days after the  
22 election would be required to be counted. It would  
23 allow campaign staff or political consultants to pick  
24 up and deliver absentee ballots. Absentee voting is  
25 where we see most voter fraud. These changes in the

# EXHIBIT J

RETRIEVED FROM DEMOCRACYDOCKET.COM

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
FIFTH DIVISION

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THE LEAGUE OF WOMEN VOTERS OF	)	
ARKANSAS, ARKANSAS UNITED,	)	
DORTHA DUNLAP, LEON KAPLAN,	)	
NELL MATTHEWS MOCK, JEFFREY RUST,	)	
AND PATSY WATKINS,	)	
	)	CASE NO.
PLAINTIFFS,	)	60CV-21-3138
v.	)	
	)	
JOHN THURSTON, IN HIS OFFICIAL	)	
CAPACITY AS THE SECRETARY OF STATE OF	)	
ARKANSAS; AND SHARON BROOKS, BILENDA	)	
HARRIS-RITTER, WILLIAM LUTHER,	)	
CHARLES ROBERTS, JAMES SHARP, AND	)	
J. HARMON SMITH, IN THEIR OFFICIAL	)	
CAPACITIES AS MEMBERS OF THE ARKANSAS	)	
STATE BOARD OF ELECTION	)	
COMMISSIONERS,	)	
	)	
DEFENDANTS.	)	

---

DEPOSITION OF JOSHUA BRIDGES  
Friday, December 17, 2021  
Reported by Eileen Mulvenna, CSR/RMR/CRR

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DIGITAL EVIDENCE GROUP  
1730 M Street, NW, Suite 812  
Washington, D.C. 20036  
(202) 232-0646

1 in order to determine that.

2 Q. Does the voter registration database  
3 contain signatures?

4 A. It does not -- yes, it does. It does  
5 contain signatures if those signatures have been  
6 scanned in by the county clerk's office.

7 Q. What do you do if they haven't been  
8 scanned in?

9 A. When we use the language "verification  
10 of signatures," we don't necessarily verify the  
11 actual signature. That is just a phrase that we  
12 use. We are verifying the additional content that  
13 is found on each petition page. We're looking at  
14 the printed name, date of birth and address of that  
15 voter in order to determine if that individual was a  
16 registered voter when they signed the petition and  
17 in what county when they signed that petition.

18 Q. Do you need to look at signatures in  
19 the database at all to do this?

20 A. No, ma'am, we don't.

21 Q. Do you look at signatures in the  
22 database to do this?



1 Are you aware of any instances of  
2 voter fraud, as you just defined it, in the 2020  
3 general election?

4 A. I personally have not witnessed or  
5 been informed of any official voting fraud that  
6 occurred in 2020, no, ma'am.

7 Q. Are you aware of any voter fraud, as  
8 you defined it, that occurred in the 2018 general  
9 election?

10 A. There was an instance in a local  
11 election. I don't recall if it was the 2018 general  
12 election or not, but there was a voter who decided  
13 he needed to vote twice. That was, I believe,  
14 prosecuted. It was found out and that was handled  
15 in the best way possible. I don't recall which  
16 election that was. I believe it might have been in  
17 2018.

18 Q. Do you know how that voter voted --  
19 the method of voting utilized by that voter?

20 A. I do not recall, no, ma'am.

21 Q. Okay. I'd like to ask Ms. Guerrero to  
22 please show you what I've premarked as Exhibit B in

1     you described it?

2             A.       The need for true voter ID establishes  
3     free, fair and smooth elections in the sense that  
4     each voter is responsible for proving to the poll  
5     workers and to the local election officials that  
6     they are who they say they are and that they are  
7     qualified to vote in any given election.

8             Q.       Prior to the enactment of Act 249,  
9     were voters required to establish in any way that  
10    they are who they say they are and eligible to vote?

11            A.       Yes, ma'am.

12            Q.       What was the method for doing that  
13    prior to Act 249?

14            A.       They would need to present photo  
15    identification in any form of voting, whether it was  
16    in-person, early vote, absentee or provisional. If  
17    they did not provide that identification, they had  
18    the opportunity to sign an optional verification of  
19    identity affidavit.

20            Q.       Are you aware of any instances of  
21    voter fraud, as you described it, occurring because  
22    of the use of the affidavit?

1           A.       Not specifically in any instances, to  
2 my knowledge, no, ma'am.

3           Q.       Have you ever seen the affidavit that  
4 was utilized before Act 249 was passed?

5           A.       Yes, ma'am.

6           Q.       What did the affidavit require the  
7 voter to attest to?

8           A.       The affidavit required the voter to  
9 attest that they were the person signing whatever  
10 document they were signing and that they are who  
11 they say they are and that they were qualified to  
12 vote in the election. I'm paraphrasing.

13          Q.       Understood.  
14 Do you know if that document was  
15 signed under penalty of perjury?

16          A.       I believe it was, yes, ma'am.

17          Q.       Are you aware of what the penalty  
18 would have been for someone to sign that affidavit  
19 falsely?

20          A.       I don't recall what the penalty was,  
21 no, ma'am.

22          Q.       Are you aware of anyone ever having

1 applications if the -- for applications submitted,  
2 using the form prescribed, in person, it is the  
3 deadline to submit absentee ballot applications  
4 Friday before election day.

5 Q. What is the deadline to submit  
6 absentee ballot applications by mail?

7 A. No later than seven days prior to the  
8 date of the election.

9 Q. Understood.

10 And I think that you said that there  
11 was another discrepancy on this page.

12 What was that?

13 A. I mentioned the deadline for the  
14 delivery of the ballots. Not aware of any other  
15 discrepancies just by glancing at this.

16 Q. What is the discrepancy with regard to  
17 the deadline for delivery of ballots?

18 A. "In person: By close of business the  
19 day before the election," that is unfortunately  
20 incorrect. According to the new law, the deadline  
21 for that would be the Friday before the election.

22 Q. I think you had mentioned earlier that

1     there have been some elections since the enactment  
2     of the four laws at issue in this case; is that  
3     correct?

4             A.       Yes, ma'am.

5             Q.       Were voters entitled to vote absentee  
6     in those elections?

7             A.       Yes, ma'am.

8             Q.       If a voter referred to your website to  
9     determine their deadline for returning their  
10    absentee ballot at this time, would they be provided  
11    with the correct information?

12            MR. MOSLEY: Object to form.

13            Go ahead.

14            THE WITNESS: According to the  
15            information found here, no, ma'am. There's  
16            some incorrect information here.

17    BY MS. VELEZ:

18            Q.       Is there any risk that a voter could  
19    be disenfranchised by relying on this information  
20    with regard to the in-person return deadline for  
21    absentee ballot?

22            MR. MOSLEY: Calls for speculation.

1 Please go ahead.

2 THE WITNESS: "Disenfranchised," I  
3 don't like that word. Confused and  
4 misinformed, yes. The voter would be  
5 misinformed if they relied on this current  
6 setting of the website in order to turn their  
7 application in or submit their ballot.

8 BY MS. VELEZ:

9 Q. If an absentee voter who is unable to  
10 attend the polls and, therefore, eligible to vote  
11 absentee asked their designated bearer to return  
12 their absentee ballot for them on the Monday before  
13 the election, would that ballot be counted?

14 A. Under the current law, I do not  
15 believe that ballot would be counted.

16 Q. If that voter was eligible to vote  
17 absentee, would that voter have any other method of  
18 voting available to them?

19 A. Yes, ma'am. They could come in and  
20 vote early or vote at the polls if their ballot was  
21 not received in time.

22 Q. In order to vote absentee, however,

1 they need to be either unavoidably absent or unable  
2 to attend; is that correct?

3 A. Those are some of the excuses for  
4 voting absentee, yes, ma'am.

5 Q. Is it at least theoretically possible  
6 then that a voter who relied on this and asked a  
7 designated bearer to return a ballot for them on the  
8 Monday before the election could be without the  
9 opportunity to vote?

10 A. That is theoretically possible,  
11 absolutely, yes, ma'am. But it's also theoretically  
12 possible for the voter to turn back around and come  
13 in and vote that same Monday before the election or  
14 on election day. Voters will bring their ballots in  
15 and turn them in in person all the time.

16 It's not up to the Secretary of  
17 State's Office, the County Election Commission, the  
18 county clerk or any other entity to police or submit  
19 their authority over a voter as to whether or not  
20 their reason for voting absentee is legitimate.

21 That's all incumbent upon the voter.  
22 If an absentee voter says that they are unavoidably

1 submission for -- or delivery of absentee ballots to  
2 the office of the clerk on the Friday before  
3 election day by the voter, bearer or administrator.

4 Q. What State interest does the Secretary  
5 of State's Office assert to justify Act 973?

6 A. Well, the interest of the State on  
7 this is, the fact that there is so much happening,  
8 not only during early voting, before early voting,  
9 during early voting, before election day, on  
10 election day, the actual administration of an  
11 election is not something you can snap your fingers  
12 and get done. The administration of election takes  
13 extremely hard work, attention to detail.

14 And I can preach on that for a while,  
15 but just for the sake of time, the fact that this  
16 deadline is moved back to Friday, it's going to  
17 allow the local election officials the ability to  
18 focus more time on getting set up and creating --  
19 not creating, but getting set up and actually  
20 getting ready to administer election day duties.

21 As you are probably already aware,  
22 early voting goes up to the Monday before the



1 election. So even the Monday before the election,  
2 voting is happening at the office of the county  
3 clerk and possibly other early voting locations.

4 So by moving the deadline for the  
5 delivery of absentee ballots back to the Friday  
6 before, any foot traffic coming into the office of  
7 the county clerk or any mail -- excuse me -- yes,  
8 foot traffic. We'll talk about mail later. Any  
9 foot traffic is greatly decreased, and it allows the  
10 clerk and their staff to focus more on election day  
11 preparations.

12 Q. Would eliminating early voting the  
13 weekend before the election also serve that purpose?

14 A. Elimination of early voting on the  
15 Monday before?

16 Q. The weekend before.

17 A. It would -- if early voting was  
18 eliminated the weekend before the date of the  
19 election, absolutely, yes, it would alleviate that,  
20 but that's not the way the current law reads.

21 Q. But a justification for the  
22 elimination of early voting might be that it

1 vote early?

2 A. The voter is able to go to a  
3 designated early voting location, provide ID to the  
4 poll worker, get checked in. Then at that point,  
5 they are permitted to vote early.

6 Q. What is the process for returning an  
7 absentee ballot in person?

8 A. I have never myself personally voted  
9 absentee, nor have I seen that process happen, so I  
10 can't necessarily speak on that. However, the voter  
11 can and will present their ballot to the clerk or  
12 their staff. I believe a lot of times the clerk  
13 will have the voter sign the designated bearer log.  
14 And aside from that, I'm not a hundred percent sure  
15 because I've never seen that process myself.

16 Q. Do you know if the clerk checks the ID  
17 of either the voter or designated bearer returning  
18 the ballot?

19 A. At the time that the ballot is  
20 submitted -- if it's submitted by the voter, I don't  
21 believe ID is checked. If it is submitted by the  
22 administrator or the designated bearer, I do believe

1 ID is checked at that time, and that individual  
2 would have to sign the bearer log as well.

3 Q. Do you need to sign any poll book or  
4 log to participate in early voting?

5 A. Yes, ma'am.

6 Q. Do you have to provide identification  
7 to participate in early voting?

8 A. Unless you want to vote a provisional  
9 ballot, yes, ma'am.

10 Q. Do you have any reason to believe that  
11 the process for returning an absentee ballot in  
12 person is any more time-consuming than the process  
13 of checking in voters to vote early?

14 A. I don't know that I can accurately  
15 make that comparison, for reasons stated previously,  
16 because I have not seen the absentee ballot  
17 dropoff/check-in process. I do know that this past  
18 election, with COVID, we all know -- everybody in  
19 this room knows that absentee ballots skyrocketed.

20 Pulaski County specifically had an  
21 extreme increase, so much so that they had to  
22 utilize a drive-through dropoff for their ballots,

1     which took not only planning, but it also took time,  
2     coordination with the police, coordination with the  
3     road department and staff committed to stand outside  
4     and accept those ballots.

5             Q.       Understood.

6                     First question: You indicated that  
7     there was an increase in absentee voting because of  
8     COVID-19 in the 2020 general election; is that  
9     right?

10            A.       Yes, ma'am.

11            Q.       Do you know how many absentee ballots  
12     cast in the 2020 general election were returned in  
13     person?

14            A.       No, ma'am, I don't.

15            Q.       And do you know how many absentee  
16     ballots returned in the 2020 general election were  
17     returned by mail?

18            A.       No, ma'am. I'm not aware of that  
19     number.

20            Q.       Are you aware of the deadline to  
21     return an absentee ballot by mail under Arkansas  
22     law?

1           A.       In a normal sense, I don't believe  
2       there is. Any correspondence with a voter from the  
3       clerk to the voter typically is scanned in and  
4       logged. Whether or not that's going to have a  
5       signature is dependent upon the document. So I'm  
6       not going to say yes or no. There is absolutely a  
7       chance that there could be.

8           Q.       Could that include prior absentee  
9       ballot applications?

10          A.       Yes, ma'am.

11          Q.       Under Act 736, are county clerks  
12       entitled to look at prior absentee ballot  
13       applications when comparing the signature on the  
14       current absentee ballot application?

15          A.       I believe that that is an option for  
16       them. I believe that whatever is tied to that  
17       registrant record would be fair game in order to  
18       compare those signatures.

19          Q.       So it's your understanding that under  
20       Act 736, any signature that the clerk might have on  
21       file is fair game for comparison; is that correct?

22          A.       I believe it is, yes, ma'am.

1           Q.       What is the Secretary of State's  
2     interest with regard to just that language that  
3     we've been discussing under Act 736?

4           A.       We believe that this can shore up any  
5     potential voting fraud via the absentee ballot  
6     because it's going to ensure that the person filling  
7     out and submitting an absentee ballot application is  
8     indeed the voter name on that application.

9                    So if John Smith is a resident and is  
10    bound in a wheelchair and cannot make it to the  
11    polls, he's absolutely entitled to submit an  
12    absentee ballot application. But John's going to  
13    need to make sure that his signature is his normal  
14    signature that he uses probably on a daily, weekly  
15    basis and be able to -- that signature would need to  
16    be consistent with whatever is on his registrant  
17    record. That's going to give not only the clerk a  
18    piece of mind that this is indeed John Smith, but it  
19    will also keep the integrity of the election as  
20    intact as possible.

21           Q.       And the clerk can preserve the  
22    integrity of the election by looking to any

1 signature that the clerk has on file in the voter  
2 registration system?

3 A. I believe that is correct, yes, ma'am.

4 Q. Would it further the integrity of the  
5 election system in any way by limiting the clerk to  
6 the signatures they can use for comparison?

7 A. I don't know that this limits the  
8 clerk necessarily. It's just going to depend and  
9 rely upon the clerk to actually capture those  
10 signatures on any of the documentation that is  
11 submitted by the voter. So I don't know that  
12 there's necessarily a limitation or a hindrance on  
13 the part of the clerk under this requirement.

14 Q. Could it theoretically make it easier  
15 on the clerk to match a signature if they have more  
16 comparison signatures available to them?

17 A. Theoretically, yes, it could. The  
18 more documentation that they have scanned in to that  
19 record the better because of the fact that it could  
20 give multiple examples of a signature. Because, as  
21 we all know, signatures aren't always perfectly  
22 identical so they can change, of course.

1 process it. So the clerk has the opportunity and  
2 should indeed contact those voters to try to remedy  
3 those situations.

4 Q. Can a verbal verification from the  
5 voter that they are, in fact, the person who signed  
6 the application allow the clerk to issue an absentee  
7 ballot to this voter?

8 A. I can't necessarily say yes or no to  
9 that because I think that would draw a legal  
10 conclusion. That would be incumbent upon the county  
11 clerk to make that decision.

12 Q. Understood.

13 Has any guidance been provided by the  
14 Secretary of State's Office to the county clerks as  
15 to this process?

16 A. We are periodically informing county  
17 clerk's offices on the process for absentee ballots.  
18 We provide them with information on law changes. We  
19 provide them with election law books. We provide  
20 them with updates to forms. So, yes, ma'am, there  
21 is some dialogue there as well.

22 Q. Are you aware of whether the county



1 clerks receive any training on how to conduct  
2 signature comparison?

3 A. Not aware of any training they  
4 received on that, no, ma'am.

5 Q. Looking back at the statute that you  
6 have, Act 736, what guidance is provided by the  
7 statute with regard to how comparable two  
8 signatures -- the signatures compared need to be?

9 A. I don't know that there's guidance on  
10 how comparable the signatures need to be, but the  
11 clerk has to be satisfied with the comparison. So  
12 that's a relative definition. It can vary from one  
13 clerk to the next. I'm not personally aware of any  
14 county clerks that consider themselves handwriting  
15 experts or signature experts. So that is a -- that  
16 would be relative.

17 Q. Has any training been provided to the  
18 county clerks by the Secretary of State's Office as  
19 to how to engage in this comparison process?

20 A. I'm not aware of any training that has  
21 happened in regards to that, no, ma'am.

22 Q. I believe, hours ago now, you have

1 told me that you had testified in some litigation  
2 regarding initiative and referendum processes in the  
3 state; is that correct?

4 MR. MOSLEY: Object to form, beyond  
5 the scope.

6 Go ahead.

7 THE WITNESS: Yes, ma'am, that is  
8 correct.

9 BY MS. VELEZ:

10 Q. And going back to that testimony,  
11 would you remind me whether part of that process  
12 involved reviewing signatures on petition forms, for  
13 example?

14 MR. MOSLEY: Same objection.

15 THE WITNESS: Sorry, Mike.

16 Our office does not directly or  
17 expressly review the actual mark that is made  
18 in the column titled "Signature." The  
19 corresponding information that is on the  
20 actual petition page is what our office uses  
21 to validate whether or not that individual  
22 was a registered voter when they signed that

1           petition.

2       BY MS. VELEZ:

3           Q.       And, again, what data points -- what  
4       are those that you look to?

5           A.       Those data points are: Printed name;  
6       date of birth; and residential address, including,  
7       city, state, county.

8           Q.       Is that information provided on an  
9       absentee ballot application?

10          A.       That information is provided by the  
11       voter to the county clerk on their absentee ballot  
12       application in a normal sense, yes, ma'am.

13          Q.       Are county clerks required to look to  
14       printed name, date of birth and residential address  
15       in deciding whether to issue a ballot in response to  
16       an absentee ballot application?

17          A.       I believe they're required to ensure  
18       that that individual is a registered voter within  
19       their county before they issue that absentee ballot.  
20       That is -- that could be a process as simple as  
21       searching them in the voter registration database.

22                    It doesn't necessarily entail them

1 THE WITNESS: Yes, ma'am.

2 MS. VELEZ: Perfect.

3 BY MS. VELEZ:

4 Q. What is the state of the law in light  
5 of Act 728?

6 A. Act 728 amended the definition of  
7 electioneering to not allow individuals within the  
8 100-foot zone unless they had a lawful purpose to  
9 enter or exit a polling site.

10 Q. Did Act 728 -- under Act 728 -- let me  
11 withdraw my question.

12 Under Act 728, is entering the  
13 100-foot perimeter of a polling place without a  
14 lawful purpose electioneering?

15 A. I believe it gives the opportunity for  
16 people to perform electioneering, yes. I think I  
17 answered your question.

18 Q. What does electioneering mean?

19 A. Electioneering is the process of  
20 someone attempting to sway a voter to vote one way  
21 or the other on either a ballot issue or for a  
22 certain or against a certain candidate. And there

1 Q. Do you know whether electioneering is  
2 a crime?

3 A. I believe it is, but I'm not sure what  
4 the penalty is.

5 Q. Are you aware of any prosecutions in  
6 the 2020 general election for electioneering within  
7 the 100-foot perimeter?

8 A. I am personally not aware of any  
9 prosecutions for electioneering in the past  
10 election.

11 Q. Are you aware of any group or  
12 individual that provided water to voters within the  
13 100-foot perimeter in the 2020 general election?

14 A. I am aware of a group that testified  
15 against legislation, that alleged that they should  
16 be able to hand out water. I believe the group's  
17 name was Indivisible. They alleged that they should  
18 be allowed to be in that zone to give refreshments  
19 on a hot summer day during an election, but that's  
20 the extent of my knowledge of that.

21 Q. Do you know if Indivisible is a  
22 nonpartisan group?

1 correct?

2 A. Yes, that is correct.

3 Q. Is that Arkansas law?

4 A. Yes, ma'am. I believe -- I want to  
5 say there is something that exists under Americans  
6 with Disabilities Act for that as well.

7 Q. What about entering for a purpose that  
8 might not have -- that might not be provided for in  
9 statute; is that a lawful purpose?

10 A. That would be something that's subject  
11 to interpretation because it would -- it would  
12 depend on what someone is alleging to be a lawful  
13 purpose. If a lawful purpose is, I need to come in  
14 so I can wash these windows when they weren't asked  
15 to wash those windows, is that a lawful purpose?

16 Well, that's up to speculation and  
17 interpretation. So I don't know that I can really  
18 delve into what a lawful purpose is with me not  
19 being an attorney. I just do know that there are  
20 certain individuals that are allowed within polling  
21 locations, so...

22 Q. Is there any law that you're aware of

1 that entitles Arkansas voters to bring their  
2 children with them to the polling place?

3 A. I'm not aware of a law that permits  
4 them to bring their children to the polling place,  
5 but I'm also not aware of a law that prohibits them  
6 from bringing their children to a polling place. I  
7 brought one of my own children to vote with me, and  
8 I felt like I wasn't breaking any laws.

9 Q. Is the issue that there needs to be  
10 statutory permission? Or the issue needs to be  
11 that -- or let me rephrase that.

12 Is lawful purpose defined by the fact  
13 that there is a statute that entitles you to be  
14 within the space, or is lawful purpose defined by  
15 some criminal statute for violation of law?

16 MR. MOSLEY: I'll object to form on  
17 legal conclusion.

18 But if he answers, of course.

19 THE WITNESS: Yeah, I -- I would  
20 probably go with Mike on that. I don't know  
21 that I could draw a -- I don't know that I  
22 could myself draw a conclusion on whether or

1 not -- or which avenue someone would need to  
2 take in order to accurately define a legal  
3 conclusion -- a lawful purpose.

4 BY MS. VELEZ:

5 Q. Understood.

6 And you're not an attorney; correct?

7 A. Yes, ma'am, I'm not an attorney.

8 Q. Understood.

9 And you don't feel comfortable opining  
10 on what constitutes a lawful purpose versus what  
11 does not?

12 A. That is correct, yes, ma'am.

13 Q. Okay.

14 MS. VELEZ: I don't think that I have  
15 anything else at this time.

16 MR. MOSLEY: Just -- you're not going  
17 to want me to ask this. It's just going to  
18 get more questions about it.

19 EXAMINATION

20 BY MR. MOSLEY:

21 Q. I mean, Josh, she just asked you if  
22 you're an attorney and, therefore, you don't feel



1 talking about that lists those things that are  
2 lawful purpose, does it say that only these things  
3 are lawful purposes or is it -- or do you know?

4 A. I believe that the wording of the law  
5 says "A person shall not enter a polling place  
6 except," and then it begins listing individuals and  
7 situations to where certain people can be within  
8 that -- or in that area.

9 Q. So you're not a lawyer. Whatever  
10 "except" means, you're going to let the judge or  
11 whoever figure that one out; right?

12 A. People much smarter than me, yes, sir.

13 MR. MOSLEY: Okay. That's it.

14 MS. VELEZ: Of course, Mike. I just  
15 have one follow-up question.

16 EXAMINATION (Cont'd)

17 BY MS. VELEZ:

18 Q. I want to be clear, Mr. Bridges, that  
19 your understanding of the current law is that there  
20 is a list that identifies who may come in and  
21 outside of the 100-foot perimeter; is that correct?

22 A. Yes, ma'am, that's my understanding.

# EXHIBIT K

RETRIEVED FROM DEMOCRACYDOCKET.COM

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
FIFTH DIVISION

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THE LEAGUE OF WOMEN VOTERS OF )  
ARKANSAS, ARKANSAS UNITED, )  
DORTHA DUNLAP, LEON KAPLAN, )  
NELL MATTHEWS MOCK, JEFFREY RUST, )  
AND PATSY WATKINS, )  
CASE NO. )  
PLAINTIFFS, ) 60CV-21-3138  
v. )  
JOHN THURSTON, IN HIS OFFICIAL )  
CAPACITY AS THE SECRETARY OF STATE OF )  
ARKANSAS; AND SHARON BROOKS, EILENDA )  
HARRIS-RITTER, WILLIAM LUTHER, )  
CHARLES ROBERTS, JAMES SHARP, AND )  
J. HARMON SMITH, IN THEIR OFFICIAL )  
CAPACITIES AS MEMBERS OF THE ARKANSAS )  
STATE BOARD OF ELECTION )  
COMMISSIONERS, )  
DEFENDANTS. )

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VIDEOTAPED 30(b)(6) DEPOSITION OF  
DANIEL SHULTS  
Thursday, December 16, 2021

Reported by Eileen Mulvenna, CSR/RMR/CRR

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DIGITAL EVIDENCE GROUP  
1730 M Street, NW, Suite 812  
Washington, D.C. 20036  
(202) 232-0646

1 Election Commissioners, are you still involved in  
2 the complaint process in any way?

3 A. Most certainly.

4 Q. And do your duties involve  
5 interpreting and applying Arkansas' election laws?

6 A. Yes.

7 Q. Does the State Board of Election  
8 Commissioners review pending and proposed  
9 legislation pertaining to elections?

10 A. We keep up with it, absolutely.

11 Q. How do you do that?

12 A. We would monitor the General  
13 Assembly's website where bills are filed. Whoever  
14 files the bill, it would be virtually immediately  
15 put online. And then we monitor all of those, which  
16 may have to do with elections, read them, try and  
17 understand what they do, what they require, what the  
18 impact would be on the agency and the process as a  
19 whole.

20 Q. Do you also consider what the impact  
21 would be on the voters of Arkansas?

22 A. Yes, that would be part of what I mean

1 describe that is to describe what the agency does.

2 In addition to the complaint process, we have a  
3 training program. We're tasked with providing  
4 training to county election officials, along with a  
5 few others. So, obviously, as director, I'm  
6 responsible for ensuring that that program is  
7 implemented and is as effective as it can be.

8 The third major duty of this office is  
9 to fund the preferential primary. Historically, as  
10 I suppose it's probably the case elsewhere, the  
11 primary was funded by the parties, and over time  
12 that process was abandoned for a government-funded  
13 primary. But at the time that was done, long before  
14 my time, it was decided that doubling the unfunded  
15 mandate on the counties to pay for the election was  
16 unfair. So the state reimburses the counties for  
17 the cost of the primary election, and those funds  
18 and reimbursements are flipped through our office.

19 Q. Got it. So I have --

20 (Cross talk.)

21 A. [Inaudible] that are more minor in  
22 nature, publications, which although it's easy to

1 say, it's not minor in scope. That's what we've  
2 been working on over the past few months. And there  
3 are some new jobs and new laws, such as collecting  
4 reports that are -- new types of reports and  
5 information, various and sundry things of that  
6 nature. We have an audit process now [inaudible].

7 Q. Got it.

8 And I think you just mentioned that  
9 one of the duties includes training the counties.  
10 Will you tell me a little bit more about that?

11 A. Yes. So the State Board of Election  
12 Commissioners is responsible for providing training  
13 to county election commissioners, in this instance,  
14 coordinating and then the Secretary of State is  
15 coordinating these trainings. So we would directly  
16 train county election commissioners to accomplish  
17 the training of poll workers, which is a thousand  
18 people across the state. We would certify at least  
19 two poll worker trainers for each county. So the  
20 county election commission selects two people to  
21 oversee what we call trainer to trainer. That  
22 training is then administered directly to those

1 is essentially, as we conceive it, a person who is  
2 kind of the point of contact for the commission. It  
3 could be a commissioner. One person in the county  
4 is going to be required to receive this new type of  
5 training, which is essentially our understanding and  
6 vision for what it would be to delve into the more  
7 technical aspects where we just can't get to in  
8 court -- in commissioner training

9 Those sorts of trainings are currently  
10 available on a voluntary basis from the vendor of  
11 the Secretary of State, but there's now going to be  
12 a process in the law where it's required that the  
13 county have someone attend this biannual state  
14 training. It's going to go a little deeper on the  
15 technical how-tos of running an election.

16 Q. What training materials are provided  
17 in train the trainer events?

18 A. In train the trainer, there is --  
19 obviously, we would have a PowerPoint presentation.  
20 And there is a document, one of the publications is  
21 the poll worker guide and checklist. So it kind of  
22 has two functions. It's done to be a training tool,

1 counties, is there any duty to ensure compliance  
2 with election laws among the counties?

3 A. Well, the counties run the elections.  
4 Elections in Arkansas are conducted by the county.  
5 There's a process to choose the commissioners. The  
6 clerks are elected. So they have the duty to follow  
7 the law that any public official has.

8 So, yes, I mean, they have [inaudible]  
9 directly, but county election officials are required  
10 to follow state law as to how the elections are run.

11 Q. Do the State Board of Election  
12 Commissioners have any duty to ensure compliance by  
13 the county election officials?

14 A. I wouldn't say we have a duty to  
15 ensure compliance. I don't think that's exactly how  
16 I would phrase it. We have a responsibility -- the  
17 purpose of training is to help them have an  
18 understanding of what the law is. The purpose of  
19 the complaint process is to give a venue for  
20 citizens to raise issues that need to be addressed  
21 where those laws may not have been followed. Those  
22 are the strategies we employ to try and ensure



1 citizen can have it enforced. Ultimately,  
2 it's the legislature's job to establish how  
3 that process is -- how those policy decisions  
4 that relate to the election process are  
5 reached is a function of the law itself. Our  
6 job is to enforce it and to enforce it under  
7 the law as already sets out the way that it  
8 ensures [inaudible].

9 BY MS. VELEZ:

10 Q. So your understanding is that the  
11 State Board of Election Commissioners' duty is to  
12 enforce the election laws?

13 A. Absolutely, through the -- in the  
14 manner which I've already described, through the  
15 training and the enforcement of the complaint  
16 process.

17 Q. Understood.

18 Does the State Board of Election  
19 Commissioners ever analyze voter turnout?

20 A. Well, no, I wouldn't say that we  
21 analyze it. We take an interest in it, but not in  
22 like -- we would not break it down or write a

1           that direct democratic process.

2       BY MS. VELEZ:

3           Q.       When was Amendment 99 enacted?

4           A.       It would have been the previous  
5       general election, I think the 2018 general election.

6           Q.       And prior to Act 249 -- let me  
7       rephrase.

8                    Amendment 99 predates Act 249 by a  
9       number of years; is that fair to say?

10          A.       Well, it -- if I may -- I've got the  
11       law book right here. I can tell you exactly when it  
12       was, and I'll be sure I'm answering it correctly.

13          Q.       That's fine.

14          A.       Amendment 99 -- yeah, okay. 2018  
15       general election.

16          Q.       In the first election in which  
17       Amendment 99 was in effect; is that correct?

18          A.       Well, no. It's the election in which  
19       it was adopted. So 2020 was the first general  
20       election that it was enacted.

21          Q.       Understood.

22                    And in the 2020 general election, were

1 affidavit -- voter verification via affidavit  
2 permitted --

3 A. Yes.

4 Q. -- despite Amendment 99?

5 A. I don't know that I would say in  
6 despite of it, but it was permitted and that  
7 amendment was in place.

8 Q. So Amendment 99 did not require the  
9 enactment of Act 249?

10 A. No.

11 MR. MOSLEY: Objection to form, legal  
12 conclusion.

13 THE WITNESS: No.

14 BY MS. VELEZ:

15 Q. You can answer.

16 A. The text wouldn't explicitly address  
17 that one way or the other. My only point was the  
18 amendment was, I think, adopted in response to the  
19 litigation following the adoption of the voter ID  
20 law that was in place and questions surrounding it  
21 whether and how Arkansas law governed it essentially  
22 clarified that that was -- it was constitutional

1 that I believe reached such a conclusion. Another  
2 law passed in another case where the law was upheld.  
3 That was the case that the law was put on the books.  
4 Following that case, the one that was on -- that was  
5 amended by the act in question.

6 Q. And the law that was upheld allowed  
7 for a voter identification verification via  
8 affidavit; is that correct?

9 A. That is correct.

10 Q. Understood.

11 I think you said that one of the state  
12 interests behind Act 249 is protecting the integrity  
13 of elections. I'm not sure what your words were,  
14 but can you tell more about that?

15 A. Well, as I understand it, the purpose  
16 of a voter ID requirement is to -- again, it's  
17 twofold; one to prevent someone from impersonating  
18 someone else, to ensure that your voter -- there's a  
19 mechanism by which the name on the log is connected  
20 to the actual image or physical person that is  
21 associated with that name. There's some sort of  
22 connecting step between the -- other than just the

1 person [inaudible]. And the voter ID is a tool that  
2 satisfies that extra piece of -- that step in the  
3 process, which is done to ensure that a voter is who  
4 they say they are. Obviously, that policy is served  
5 by [inaudible].

6 Q. The affidavit also served that  
7 purpose?

8 MR. MOSLEY: Object to form.

9 You can answer, Daniel.

10 THE WITNESS: Thank you.

11 It's -- not, as well, obviously.

12 Because ultimately when you sign the  
13 affidavit, you're in truth, other than the  
14 removal of the qualification in the voter  
15 statement that says "to the best of my  
16 knowledge," that's about the only difference  
17 between the first statement you sign and the  
18 second statement you sign. So, ultimately,  
19 other than the deterrent threat of perjury,  
20 there's really no difference between signing  
21 the second statement and not signing at all.

22

1 have -- that you're signing under penalty of perjury  
2 without that qualification.

3 Q. In the 2020 election, were there any  
4 complaints raised about individuals who signed the  
5 affidavit, or the affirmation as you're calling it,  
6 falsely?

7 A. Not to my knowledge.

8 Q. Are you aware of any instances of  
9 false voter affirmations or affidavits in the 2018  
10 election?

11 A. Not to my knowledge.

12 Q. I believe you said you started with  
13 the State Board of Election Commissioners in 2016.  
14 Was that before or after the election?

15 A. Just barely before. I started in  
16 October.

17 Q. Are you aware of any complaints or  
18 prosecutions for false statements in the affidavit  
19 in the 2016 election?

20 A. Not to my knowledge.

21 Q. Are you aware of there ever having  
22 been an issue with a voter having signed the

1 affidavit falsely before?

2 A. I'm not aware of an issue that's come  
3 before the state board.

4 Q. Where else would it have gone?

5 A. Well, I merely mean to distinguish  
6 between I can't speak to where -- there are 75  
7 prosecuting attorneys' offices. There are 50 states  
8 in the Union. I can only speak to what I'm aware  
9 of, which is the records of the state board.

10 Q. I think you said that complaints about  
11 violations of election laws come through the State  
12 Board of Election Commissioners; is that correct?

13 A. Well, they can. They're not -- I  
14 mean, that doesn't mean that every issue does. It  
15 would depend upon someone to bring it to our  
16 attention, which we are -- we are dependent upon  
17 people to file issues with us for the most part  
18 unless something happens to be known by some other  
19 means, but that's likely unusual. So, again, I mean  
20 to qualify. I can only speak to what I actually  
21 know. I certainly can't claim to know everything.

22 Q. And you do not know of a single

1 instance in which the affidavit, as I'm referring to  
2 it, has been utilized in furtherance of any sort of  
3 election law?

4 A. I'm not aware of an allegation that it  
5 was signed falsely. It's worth mentioning, though,  
6 there is -- that's, I think, again partially why  
7 this law was probably enacted, was there's really no  
8 way to review that or at least no process set out in  
9 our laws to review that, whether that was the case.  
10 The only way it would come to light is if somebody  
11 impersonated another voter who then chose to vote  
12 themselves, the actual person, and so they  
13 essentially would have -- it would be two voter  
14 credits for that vote.

15 Q. Does the State Board of Election  
16 Commissioners have any reason to believe that the  
17 voter affidavit has ever been used in furtherance of  
18 fraud?

19 A. I don't have any records in our  
20 system -- in our -- there's nothing in our records  
21 which would indicate that sort of issue has been  
22 raised in Arkansas.



1 Q. Got it.

2 MS. VELEZ: Mr. White, I'm going to  
3 ask that you provide in the chat what I've  
4 premarked as Exhibit B.

5 (Exhibit B, No Bates numbers, Election  
6 Procedures Quick Guide, received and marked.)

7 MR. MADISON: Alexi, is that from the  
8 2020 publications?

9 MS. VELEZ: That is a question that I  
10 intend to ask Mr. Shults.

11 (Document review.)

12 THE WITNESS: Okay.

13 BY MS. VELEZ:

14 Q. Have you ever seen Exhibit B before?

15 A. Yeah. As Chris pointed out, it  
16 probably should be dated. I'm not certain where  
17 it's from 2018 or 2020, but I think the process was  
18 the same essentially both years. What it is  
19 basically is, is an excerpt from the poll worker  
20 publication -- poll workers guide checklist and  
21 reference material I mentioned earlier, as it  
22 relates to provisional fail-safe voting procedures.

1           Q.       It's your testimony then that this is  
2   a stale material, it no longer corresponds with the  
3   current law?

4                   MR. MOSLEY:  Objection to form,  
5                   mischaracterizes the witness' testimony.

6                   Go ahead, Dan.

7                   MS. VELEZ:  I'll rephrase.

8   BY MS. VELEZ:

9           Q.       Is this form stale, or is it  
10  consistent with current law?

11          A.       Well, it would be consistent with the  
12  laws for the election it was designed to service,  
13  which would have been either the 2018 or the 2020  
14  general election.

15          Q.       Do you know if this document --

16          A.       The laws that are subject to this  
17  litigation are no longer current, that's correct.

18          Q.       Do you know if this document is  
19  publicly available?

20          A.       Well, the fact that you're asking that  
21  question suggests that it probably is.  I would  
22  obviously want to --

1 Q. I'm not trying to hide the ball here.  
2 Would it surprise you to know that this document is  
3 currently available on the Secretary of State's  
4 website?

5 A. I don't know that I'd be surprised.  
6 Again, it was obviously material that was -- was put  
7 up for the purposes of articulating the law. Those  
8 laws have changed. It may be that some of the  
9 materials have been updated.

10 Q. Got it. When did Act 249 go into  
11 effect?

12 A. Actually, that's a hard question to  
13 answer than ordinarily. There was a delay in the  
14 session, but it was essentially the summer of this  
15 year sometime.

16 Q. Have any elections occurred since  
17 then?

18 A. There have been special elections that  
19 have occurred, yes.

20 Q. Would it surprise --

21 A. Or the annual school elections, minor  
22 elections, yes.

1 affidavit or affirmation was a fail-safe to prevent  
2 disenfranchisement?

3 MR. MOSLEY: Objection to form,  
4 mischaracterization, and a legal conclusion.  
5 Go ahead, Daniel, and answer.

6 THE WITNESS: I will say I think that  
7 is a legal conclusion in the sense it was  
8 part of the provisional voting process under  
9 the prior law. That process as a whole is  
10 the fail-safe we were discussing.

11 BY MS. VELEZ:

12 Q. And I just want to go back to one  
13 thing, Mr. Shults. Part of your duties in your job  
14 is interpreting and applying election laws; is that  
15 correct?

16 A. Yes.

17 Q. And making legal conclusions about the  
18 meaning of election laws?

19 A. The court's job to make legal  
20 conclusions. Our job is to inform the county  
21 election officials what their requirements are under  
22 the law. I mean, obviously, the law that says

1     you're not allowed to steal, that's different than  
2     the intricacies of tax law. So there are times when  
3     courts have to step in, but certainly our job is try  
4     to make the laws accessible to the people who need  
5     to understand them as we possibly can.

6             Q.       Does that involve interpreting the  
7     laws?

8             A.       Well, interpreting is covering a lot  
9     of ground, but it involves reading them and  
10    articulating them that no matter what -- and to some  
11    lesser or greater degree, I suppose interpretation  
12    is a piece of that.

13            Q.       Got it.  
14                    The fail-safe of voting by affidavit  
15    is no longer available under Act 249; is that  
16    correct?

17            A.       That is correct.

18                   MR. MOSLEY: Objection to form. Go  
19    ahead.

20                   THE WITNESS: That is correct.

21    BY MS. VELEZ:

22            Q.       I'd like to ask Mr. White to show

1 BY MS. VELEZ:

2 Q. How many pages? I'm sorry?

3 A. Two.

4 Q. Correct. Got it. I thought you said  
5 ten. I'm sorry.

6 (Document review.)

7 THE WITNESS: Okay. I've reviewed it.

8 BY MS. VELEZ:

9 Q. What is this document?

10 A. It appears to be -- well, it's title,  
11 "Absentee Canvassing Quick Guide." It essentially  
12 is the same thing as what the other document was.  
13 It's an excerpt or a quick distillation of the  
14 process of canvassing absentee ballots.

15 Q. Is this document current?

16 A. It is stale, as you put it, for the  
17 same reasons as the previous document, that the  
18 affirmation process has been removed.

19 Q. Is there any reason that this document  
20 would remain on the Secretary of State's website?

21 MR. MOSLEY: Objection to form. It  
22 goes beyond the scope of the 30(b)(6)

1 vis-a-vis Mr. Shults and SVC.

2 Daniel, please answer.

3 THE WITNESS: I don't know that I  
4 have -- I'm not sure there couldn't be a  
5 reason, but I don't have it, of course.

6 BY MS. VELEZ:

7 Q. Is there an updated version of this  
8 document available?

9 A. Not this specific document; but,  
10 again, same thing, we've -- we're in the process of  
11 updating the larger source documents. We no doubt  
12 will provide a standalone summary of these  
13 provisions, as we obviously have done in the past.

14 Q. And if you look at page 2 of this  
15 document, which I'm going to ask the court reporter  
16 to please mark as Exhibit C to this deposition. Is  
17 the first heading "Provisional Absentee Ballots"  
18 where the stale language is included?

19 A. That is correct.

20 Q. What's the difference under the  
21 current law?

22 A. The option -- so now we're talking

1 about the voter statement rather than the  
2 provisional ballot envelope, but this optional  
3 identity affirmation is no longer available on the  
4 document, pursuant to the fact that this  
5 conversation [inaudible].

6 Q. What entity is responsible for  
7 drafting this document?

8 A. Prior to the 2021 General Assembly,  
9 that entity was the county clerks, essentially.  
10 There was no designated person, but they had the  
11 duty to provide it. The Secretary of State had a  
12 practice of drafting a document for them to use.  
13 That was widely but not universally utilized.  
14 Following the 2020 General -- or 2021 General  
15 Assembly, the State Board of Election Commissioners  
16 was responsible for drafting the uniform document  
17 that was --

18 Q. And you don't know if this is from  
19 2018 or 2020?

20 A. It could -- well, my suspicion is that  
21 it was generated in 2020 -- 2018, when the new laws  
22 went into effect and was held over, but it was



1 Q. Do you know if county clerk offices  
2 are open on weekends?

3 A. I don't know, but I would be surprised  
4 if any of them are open on weekends.

5 Q. Do you know what underlying documents  
6 are required to obtain a free voter verification  
7 card?

8 A. I can't articulate it off the top of  
9 my head. I'm happy to pull the information, but  
10 it's articulated in a rule promulgated throughout  
11 the Secretary of State --

12 MS. VELEZ: I'm going to ask Mr. White  
13 to please show in the chat of what's been  
14 premarked as Exhibit E.

15 (Exhibit E, No Bates numbers,  
16 Application and Affidavit for Voter  
17 Verification Card, received and marked.)

18 THE WITNESS: Okay. I've reviewed it.

19 BY MS. VELEZ:

20 Q. Have you seen this document before,  
21 Mr. Shults?

22 A. I'm sure that I have. I don't have an

1 explicit recollection of it, but I'm aware of its  
2 existence. And I think if I'm not mistaken, it may  
3 be an attachment to the end of the rule I  
4 referenced. If so, that's where I would have seen  
5 it.

6 Q. And if you would look at page 2 of  
7 what I've premarked as Exhibit E.

8 Is the information provided on page 2  
9 consistent with your understanding of the rule?

10 A. To the best of my knowledge --  
11 obviously, the best evidence would be to  
12 double-check the rule, but I believe that's correct,  
13 yes.

14 Q. Is it your understanding that a voter  
15 would need to provide both the documents in the  
16 first set of categories, which are examples of  
17 documentation containing full legal name and date of  
18 birth, as well as a document from the second  
19 category, which is examples of documentation  
20 containing known and residential address?

21 A. That's correct. That is consistent  
22 with my understanding, I should say.

1 Q. Do you know how many Arkansans lack  
2 sufficient underlining documents to satisfy both of  
3 those categories?

4 A. No.

5 MS. VELEZ: I'd like to ask that  
6 Exhibit E be appended to the deposition.

7 MR. MOSLEY: Subject to my served  
8 objection, I have no problem with that.

9 BY MS. VELEZ:

10 Q. Mr. Shults, how many voter  
11 verification cards have been issued in Arkansas  
12 since 2017?

13 A. I don't know.

14 Q. Does the State Board of Election  
15 Commissioners track how many cards have been issued  
16 pursuant to the statute and rule?

17 A. No.

18 Q. Are you aware of anyone that tracks  
19 how many IDs cards are issued pursuant to the  
20 statute and rule?

21 A. My understanding would be that the  
22 county clerks whose responsibility it is to

1 Q. Before we get to that, do you know how  
2 many voters voted absentee in the 2020 general  
3 election?

4 A. Obviously all information I could  
5 obtain, but not off the top of my head, no.

6 Q. Do you know how many voters utilized  
7 the affirmation in lieu of providing a copy of their  
8 photo ID in the 2020 general election?

9 A. Again, not as I sit here, no, although  
10 it's worth mentioning -- that specific question  
11 won't be answered. But one of the other laws of the  
12 2020 general election was it's going to have us  
13 start collecting that sort of information. So going  
14 forward the answer would be yes.

15 Q. But going forward, unless we prevail  
16 in this litigation, I suppose, there will be no  
17 option for the affirmation; is that correct?

18 A. Well, maybe not yet to this specific  
19 question; but as a general matter, we're going to  
20 collect that information moving forward, the various  
21 dispositions of absentee individual voting.

22 Q. But as of present, the State Board of

1 is needed to give support to a voter.

2 In addition to that, voters have the  
3 right to skip the line altogether if they're  
4 unable to stand in the line. So that  
5 physical need shouldn't be there. But if a  
6 voter chooses to stand in the line but needed  
7 assistance to do so, that person assisting  
8 them would be in no way encumbered from doing  
9 so under this act.

10 So the state interest is the same  
11 state interest, as I understand it, again,  
12 that we're not the ultimate articulators for  
13 the state interest for the state of Arkansas  
14 in a conclusive sense. But as I understand  
15 it, it's an understanding, I think, of the  
16 agency, is to further the prohibition on  
17 electioneering and otherwise engaging voters  
18 who are waiting to vote inside that exclusion  
19 zone or in the building or about to enter the  
20 building.

21 There was -- my understanding and to  
22 the best of my understanding that of the

1 agency is that there were instances where  
2 groups either did or wanted to basically set  
3 up booths or what have you inside the  
4 electioneering exclusion zone where -- now,  
5 that's a common practice outside -- you know,  
6 101 feet away. You absolutely can do that.

7 And essentially there are people  
8 wanting to get closer to sit by the door of  
9 the poll, and I think the state interest is  
10 essentially coextensive with the state  
11 interest in prohibiting electioneering, that  
12 the voters are left in that -- that -- the  
13 building and that immediate proximity to the  
14 building are left unmolested by people who  
15 wish to be present for whatever reasons to  
16 influence their conduct at the poll.

17 BY MS. VELEZ:

18 Q. I want to break something down. Let  
19 me know if I'm misstating what --

20 A. I may have over-answered that, but  
21 please --

22 Q. I think at one point you said that any

1 person could enter the 100-foot perimeter, and I'm  
2 not sure what you meant by that. So if you could  
3 clarify that for me.

4 A. Well, the act obviously says for a  
5 lawful purpose. Now, I don't know how much that  
6 really adds. I think if you're attempting to rob  
7 the poll or burn it down, that -- obviously, you  
8 can't enter. That would be an unlawful purpose.  
9 But if the poll's in a public library, if the poll  
10 is any other public building, there are lawful  
11 purposes of entering and exiting.

12 So it's not about prohibiting people  
13 from accessing any more than -- than the law already  
14 does. It's about prohibiting people -- I know  
15 loitering is a technical term, but for simplicity,  
16 people camping out in the zone to protect voters  
17 from being approached or otherwise -- molested is a  
18 bad word, but otherwise interacted with without  
19 their specifically choosing that interaction once  
20 they're inside that kind of -- what I call the  
21 electioneering exclusion zone.

22 MS. VELEZ: All right. I'm going to

1 ask Mr. White to please put into the chat  
2 what I've premarked as Exhibit F. This is  
3 mercifully only one-page long.

4 THE WITNESS: Sounds good.

5 (Exhibit F, No Bates numbers, Act 728,  
6 received and marked.)

7 THE WITNESS: This is the act?

8 BY MS. VELEZ:

9 Q. This is Act 728?

10 A. Okay.

11 Q. Oh, I'm asking you is this Act 728?

12 A. Sorry. Yes -- well, I guess that's  
13 what I was asking you.

14 Yes, this appears to be the text of  
15 Act 728 of the 93rd General Assembly.

16 MS. VELEZ: I'm going to ask the court  
17 reporter, please, append this as Exhibit F to  
18 the deposition.

19 BY MS. VELEZ:

20 Q. And I think that you were starting to  
21 talk about some of the language of this act,  
22 Mr. Shults. Would you take a look for me at --



1 beginning at line 31 of Exhibit F?

2 A. Yes.

3 Q. Yeah. And would you mind reading the  
4 text from line 31 to line 34 into the record for us.

5 A. "A person shall not enter or remain in  
6 an area within 100 foot of the primary entrance to a  
7 building where voting is taking place except a  
8 person entering or leaving the building where voting  
9 is taking place for lawful purposes."

10 Q. Great. And I think you know my  
11 follow-up question.

12 What constitutes a lawful purpose?

13 A. In a free society, in a constitutional  
14 republic, any purpose that's not illegal.

15 Q. Is there a list of lawful purposes  
16 that exist anywhere in the State Board of Election  
17 Commissioners' possession?

18 A. Well, that's not how we write laws in  
19 a free society. There's a list of unlawful  
20 purposes. Again, you can't enter to commit a crime.  
21 You can't enter to commit -- well, crime pretty much  
22 covers it, I guess. There are a list of people who

1 are allowed to enter the voting area, but I don't  
2 think this is limited to that.

3 Again, a lot of early voting takes  
4 place in a courthouse. Any person can enter a  
5 public courthouse. There are endless list of  
6 reasons why you'd do so. I think it's more of a  
7 question of what's unlawful. But, again, this  
8 law -- this law implemented will prevent no one from  
9 entering or leaving the building. It will simply  
10 permit people from going into that area for the  
11 purposes of -- again, I'm saying loitering. I know  
12 that has a legal definition. It may not be  
13 coextensive with our conversation, but prevent  
14 anyone from camping out in the zone.

15 Q. I think you said that there's a list  
16 of unlawful purposes. Can you just let me know what  
17 you mean by that?

18 A. I mean essentially the criminal code.  
19 Again, we don't -- we don't make -- everything's  
20 lawful unless something makes it unlawful in a free  
21 society. So I think those words don't really add a  
22 lot, in my reading of this law. What's important is

1 the except -- or excuse me. Let me get it right.

2 Yeah, except for a person entering or leaving the  
3 building where voting is taking place.

4 Q. So unless the person is entering the  
5 building, they can't enter that 100-foot zone. Is  
6 that your understanding?

7 A. Yes.

8 MR. MOSLEY: Objection to the form.

9 Go ahead.

10 THE WITNESS: It simply prohibits a  
11 person from entering the zone without the  
12 purpose of ingressing and egressing. And,  
13 again, the lawful purpose -- I mean, you also  
14 couldn't get -- walk into the poll for the  
15 purposes of burning a poll down. But, again,  
16 that's not really what we're talking about.  
17 What we're talking about is camping out in  
18 the zone.

19 BY MS. VELEZ:

20 Q. If a person were to provide bottles of  
21 water to voters on their way in or out of a polling  
22 place, would that be lawful under this enactment?

1 THE WITNESS: I think it's  
2 overcomplicating what I said. What I  
3 intended to say was that unless some -- that  
4 everything is essentially lawful until  
5 there's some entity with the authority to  
6 make it unlawful that does so. So whatever  
7 is unlawful is defined by the laws of the  
8 state and of the United States, which define  
9 those things which are unlawful. Everything  
10 else is lawful.

11 BY MS. VELEZ:

12 Q. Is electioneering within 100 feet of  
13 the entrance of a polling place unlawful?

14 A. That is unlawful. That would be an  
15 unlawful purpose.

16 Q. Is it unlawful under Act 728?

17 A. Well, again, 728 isn't -- if it's  
18 unlawful under another act, it would be unlawful  
19 under 728, but it would be the other act you would  
20 have to go to to determine whether it was lawful.  
21 Put another way, again, the effect of this law is to  
22 say that you have to -- if you're entering the zone,

1     you have to be ingressing or egressing the building.

2                     If you're committing some other  
3     unlawful act or intending to do so, then, well,  
4     obviously you can't -- you can't -- you can't go  
5     into the building, commit an unlawful act. This is  
6     acknowledging -- I guess my point is, if I'm not  
7     making it clearly, is this is permissive language,  
8     not restrictive language.

9             Q.       Is someone permitted under this law to  
10    enter the 100-foot perimeter for the purpose of  
11    providing water and then leave?

12            A.       Assuming that no other law prohibited  
13    that, this law appears to be silent on that  
14    question, as I see it.

15            Q.       So your understanding of Act 728 is  
16    that a person would be permitted to enter the  
17    100-foot perimeter and provide water to voters  
18    waiting in line?

19                    MR. MOSLEY: Objection to the form,  
20                    asked and answered at least twice. You're  
21                    flogging a dead horse.

22

1 BY MS. VELEZ:

2 Q. You can answer my question,  
3 Mr. Shults.

4 A. I think I agree with Mr. Mosley. I  
5 think that's what I said already. This law governs  
6 ingressing and egressing. It prohibits a person  
7 from setting up a table or a booth or just standing  
8 there for the purpose -- for some purpose other than  
9 going in or out of the building. Your question is:  
10 Can they engage in contact ancillary to going in or  
11 out of the building while they're doing that? The  
12 question to that -- the answer to that question is  
13 going to have to be governed under some other  
14 provision of law.

15 Q. If I have a voter that has some  
16 disability and asked someone to wait in line for  
17 them to hold their spot, essentially, so that they  
18 can sit or wait elsewhere, would that be permed  
19 under this law?

20 A. It would be permitted, although it  
21 would be their least -- it certainly wouldn't be the  
22 best course of action because a voter with a

1 place?

2 A. I think it's arguable that they still  
3 would as the -- as standing in line is the act of  
4 ingressing into the poll, but I don't know what more  
5 I can add to that.

6 Q. Got it.

7 Has the State Board of Election  
8 Commissioners provided any guidance or training to  
9 election commissioners about what the term "lawful  
10 purposes" means?

11 A. Well, our formal training program  
12 doesn't commence until the spring, which is when we  
13 will do that; but our articulation of the effect of  
14 this act and what I've described already is, I  
15 think, consistent with what I've said here today.  
16 That being that we went around the state and did  
17 about six or so meetings where the -- any election  
18 officials who wished to do so could come and hear us  
19 talk about the laws and ask whatever questions they  
20 might have.

21 Q. In those training sessions, did you  
22 say that a lawful purpose constituted any purpose of

1 ingress or egress on a polling place?

2 A. I can't say under oath exactly what  
3 was articulated in every session, but I can say that  
4 my description of the act is consistent with what we  
5 have said here today and will continue to be  
6 until -- unless support were to say I was  
7 misconstruing it.

8 Q. Have any elections occurred since the  
9 enactment of Act 728?

10 A. Yes.

11 Q. Has Exhibit D -- if you want to take a  
12 look back at it, the County Board of Election  
13 Commissioners Procedure Manual -- been updated to  
14 reflect the meaning of Act 728?

15 A. Well, it was so updated in the meeting  
16 of the state board yesterday, in fact. I mean, it  
17 is a 200-page document. It takes time to work  
18 through it. But the interim supplemental materials  
19 I've already discussed are for the purposes of  
20 modifying this document in the interim before the  
21 major elections next year.

22 Q. Is there any obligation of the State



1 Board of Election Commissioners to update this  
2 manual for lesser elections, not statewide  
3 elections?

4 A. Well, the manual is -- it is -- our  
5 obligation is to provide the manual in the context  
6 of training prior to the preferential primary  
7 election. So the legal answer is no, to my  
8 understanding. But, nevertheless, we did so in the  
9 form of the document, which explains how the laws  
10 have changed prior to the election.

11 I mean, put another way, our -- the  
12 way we handle this problem is to provide a 12-page  
13 document that concisely states what's changed about  
14 the law rather than forcing someone to dig through a  
15 200-page document to find the changes.

16 MS. VELEZ: I'm going to ask Mr. White  
17 to please show you what I've premarked as  
18 Exhibit G, which is another large document.

19 THE VIDEOGRAPHER: Sorry. What's that  
20 exhibit?

21 MS. VELEZ: G, as in George.

22

1 (Exhibit G, No Bates numbers, Training  
2 Guide and Checklist for Poll Workers,  
3 received and marked.)

4 THE WITNESS: We'll handle this, I  
5 think, the same way we handled the other one.  
6 Obviously, I can say what this appears to be  
7 based on the first two pages, and if we need  
8 to get into the specific pages, I'll let you  
9 direct me to them.

10 BY MS. VELEZ:

11 Q. Thank you.  
12 What does this appear to be?

13 A. Appears to be the training guide and  
14 checklist for poll workers, as the other training  
15 document I referenced here. And I should add that  
16 this would be, of course, the 2020 edition. This  
17 document, too, was approved in yesterday's meeting.  
18 It will be going to the publisher as soon as we  
19 finish the update -- the implementation of the  
20 update and final proofing.

21 Q. Has the State Board of Election  
22 Commissioners have any role in the drafting or

1 election officials?

2 A. Well, the hard copies will be provided  
3 in the process of conducting our training programs  
4 in the spring. Our general practice is to make them  
5 available online when we send them to the publisher  
6 for final -- final approval. Once we've -- we've  
7 made our final edits and it goes to the publisher to  
8 be printed, that's when we put them on line, too.

9 Q. I think you had told me about the  
10 train the trainer events earlier. Is that what  
11 they're called?

12 A. Colloquially in-house, yes.

13 Q. Are those the same events where you  
14 provided updates on the laws?

15 A. No, no. The -- so train the trainer  
16 and CDC training are legally required biannual  
17 program, if you will, full that's conducted in  
18 the -- the fall or the spring, depending on when the  
19 primary election day is. But in this context with  
20 the May primary election day, the spring prior to  
21 the election.

22 We conduct other events as essentially

1 a courtesy or a way to provide better service to our  
2 county election commissioners that are voluntary to  
3 attend. They're required to attend this training in  
4 the spring, but these other events are just simply  
5 made available for just trying to help them do their  
6 job better.

7 That is the -- so that would be the --  
8 what I discuss that we had done relating to the new  
9 laws would be an example of a meeting we would hold  
10 and simply invite all of the people who we help  
11 provide training and service to to attend and we can  
12 give them an opportunity to talk and we can have  
13 opportunity to talk to them about the changes. But  
14 it's -- this update, these printed materials will be  
15 provided at the legally required training in the  
16 spring of 2022.

17 Q. Understood.

18 And I think before you had referred to  
19 six meetings; is that correct?

20 A. I would -- it was approximately six.  
21 I would double-check that -- that number's  
22 important. But, yes, what we tend to do is -- you

1 just so I'm clear?

2 A. That's how we handled those meetings,  
3 yes.

4 Q. Understood.

5 And you said that those meetings were  
6 voluntary, that attendees could come or not come?

7 A. That's correct. The only time they're  
8 required to come is -- is the -- that biannual  
9 training prior to the major election.

10 Q. Were poll workers invited to attend  
11 these meetings?

12 A. Well, no in the sense that poll  
13 workers are -- who the poll workers are isn't  
14 necessarily known to us or even know prior to the  
15 election from election to election. The list of  
16 people we invite, which sounds like what you're  
17 asking, would be county clerks, County Boards of  
18 Election Commissioners, and anyone else -- like if  
19 the county has a coordinator or a deputy clerk,  
20 who's kind of on our general maximum reach mailing  
21 list, disseminating to any county election official  
22 that we're aware of.

1           A.       Enter or leave the building would, I  
2       suspect, be more likely, or at least that's where --  
3       as I sit here, would be my -- I think the more  
4       appropriate language for that sort of document.

5           Q.       If someone was walking their dog on  
6       the sidewalk cut within the 100-foot perimeter,  
7       would that constitute a lawful purpose?

8           A.       Well, perhaps not, as I guess they  
9       would not be attempting to enter or leave the  
10      building.

11          Q.       I think you had mentioned issues with  
12      individuals camping out within the 100-foot  
13      perimeter. Would you tell me a little bit more  
14      about that?

15          A.       I can't tell you -- I'm not personally  
16      aware of them. It's just my -- I had -- and I  
17      suppose I gathered this from testimony in the  
18      General Assembly that that's where it was mentioned,  
19      but my understanding is that there were some  
20      instances somewhere where -- and, actually, I think  
21      maybe we got some calls on this, too, actually.  
22      Maybe that's where I became first aware of it, that

1 those probably are going to use the paper, some may  
2 have their own electronic systems. I'm not certain  
3 about all of those. But, obviously, the big one is  
4 driver's licenses, the DF&A.

5 Q. Does the State Board of Election  
6 Commissioners website also have a printable voter  
7 registration form available?

8 A. I think so. I mean, I don't think I  
9 can say definitively under oath, but I believe that  
10 it does.

11 Q. Prior to the enactment of Act 736, did  
12 the State Board of Election Commissioners provide  
13 any training to election officials regarding which  
14 signatures can be used as comparators when  
15 evaluating an absentee ballot application?

16 A. No, that's beyond the scope of our  
17 training programs.

18 Q. So there's no training on that issue  
19 within Exhibit D?

20 A. That's correct. Of course, I'll  
21 remind you that Exhibit D is a document designed to  
22 be a reference material for county clerk

1 commissioners, and this is something they don't have  
2 anything to do with.

3 Q. Who provides training to the election  
4 officials that would engage in absentee ballot  
5 application processing?

6 A. Well, obviously, the law itself is  
7 ultimately the training. It could be the Secretary  
8 of State or associations that may provide that  
9 training. These are elected officials, of course,  
10 who are doing this is the county clerks of the  
11 counties, but I -- I wouldn't be surprised if there  
12 was training along this line, but it's not within  
13 the scope of our brief or our statutory authority.

14 Q. Are you aware of whether the State  
15 Board of Election Commissioners has ever provided  
16 any training with regard to the absentee ballot  
17 application processing procedures?

18 A. I mean, we would -- if we receive the  
19 question, we would try to answer it the best that we  
20 could; but to the best of my knowledge, this has  
21 never been the subject matter of a formal training  
22 from this agency, at least certainly not --



1 THE REPORTER: You're breaking up.

2 THE WITNESS: The answer was not to

3 the best of my -- not since I've been a part

4 of the agency and not that I'm aware of.

5 BY MS. VELEZ:

6 Q. Is it your understanding that prior to  
7 the enactment of Act 736, that election officials  
8 were permitted to compare more than just the voter  
9 registration application to the signature on the  
10 absentee ballot application?

11 A. I think there was some ambiguity along  
12 that line, but I think the answer is yes.

13 Q. I'm sorry. The answer is yes that  
14 they were permitted to look at other signatures?

15 A. Well, I think that -- again, I  
16 think -- it's my understanding that this act is  
17 designed to clarify what was something of a question  
18 in that area, what was the scope of record you were  
19 able to access. But I think, as obviously we  
20 pointed out in my reading of this, that the prior  
21 language is broader than the new language, which  
22 would mean I think that the prior language had

1 broader scope than the current language.

2 Q. Understood.

3 Do county election commissioners ever  
4 engage in any signature comparisons?

5 A. Yes.

6 Q. Can you tell me what that looks like?

7 A. Yes. So -- and probably the best way  
8 to do this is just to kind of go the process of  
9 beginning to end as it relates to the signature.  
10 The way any absentee ballot would be initiated is by  
11 application. That application is submitted to the  
12 county clerk, and it has these four data points;  
13 name, address, date of birth, and signature.  
14 The county clerk is required to, as we  
15 see here, compare those information, including the  
16 signature to determine whether they are similar and  
17 if not, not issue the ballot. It's real important  
18 to add to this that there is a mandatory cure  
19 process under 75404, which requires a clerk who  
20 determines that any of this information, including  
21 the signature, doesn't match, but particularly the  
22 signature's emphasized in the code, must reach out

1 application is compared to the signature on the  
2 voter statement. Now, that's a signature that's  
3 close in time and for the same purpose. Now,  
4 it's -- there is no cure period for that process,  
5 but that is a process -- again, that process you're  
6 not comparing an old signature to a new signature.  
7 You are comparing signatures that are close in time.  
8 So that is the process and kind of the distinction  
9 between the process.

10 Q. Is there any advantage to comparing  
11 two signatures that are close in time and for the  
12 same purpose?

13 A. Well, there is the advantage that the  
14 signature, obviously, the voter's been registered  
15 for some amount of time can vary with time. I would  
16 also hasten to add that you can also update your  
17 voter registration record, including the signature,  
18 if you choose to do so; but that is -- my read is  
19 that the code acknowledges that the potential for  
20 variation and implements, I think, an aggressive  
21 cure process for any rejection on that front end.  
22 And, again, it's only similar. So it's -- it tends

1 Q. Do you know how many absentee ballots  
2 were returned in person in the 2020 general  
3 election?

4 A. I do not.

5 Sorry if I cut you off, but assuming I  
6 heard the question correctly, I don't know that  
7 number.

8 Q. And you don't know how many absentee  
9 ballots were returned by mail in the 2020 general  
10 election then?

11 A. Sure, to be obtained if needed, but  
12 that's not data that we would proactively track.

13 Q. What's the deadline under Act 973?

14 A. The close of business on the Friday  
15 before the election.

16 Q. Do the State Board of Election  
17 Commissioners receive any complaints from county  
18 election officials that the Monday deadline prior to  
19 the enactment of 973 was burdensome to them?

20 A. Not to my knowledge.

21 Q. Do the State Board of Election  
22 Commissioners have a full list of all instances of

1 but if we're aware of it and it's not being  
2 addressed, then yes, I think we have an obligation  
3 to ensure it's addressed, if that answers your  
4 question.

5 Q. And I think I asked you earlier, but  
6 are you aware of any instances of voter fraud in the  
7 state of Arkansas in the 2020 general election?

8 A. Well, I think anything that's  
9 reflected in our records we've released. I don't  
10 have any additional instances to add to that.

11 Q. Can you recall any instances that  
12 would have been reflected in the documentation that  
13 you provided?

14 A. Not of what I think most people would  
15 generally refer to as voter fraud, other than the  
16 sense that we don't have a case where someone was --  
17 we found evidence that someone was known to have  
18 been attempting to vote illegally, if that's what  
19 you mean, no. Again, just because we don't know  
20 about it doesn't mean it didn't happen. There's  
21 certainly a lot of concern around that area, but I  
22 don't have a documented case I can refer to from the

1 last election.

2 Q. Did the State Board of Election  
3 Commissioners make any public statements with regard  
4 to the success of the 2020 general election?

5 A. I think we have a very rarely used  
6 social media where we've said, Congrats on a  
7 successful election, county commissioners, something  
8 like that, but we're not making public statements  
9 for the most part. I don't remember any sort -- we  
10 don't do press releases or things like that.  
11 Nothing that I recall related to -- I don't recall  
12 making any statement along that line after the  
13 election. It's certainly possible that we did in  
14 some manner, but it's not our practice. We don't  
15 have a press policy. We'll answer questions if the  
16 press reaches out to us, but that's not something  
17 that we generally seek proactively.

18 Q. Do you -- you said that there is  
19 concern about election integrity. Tell me what your  
20 understanding of that is?

21 MR. MOSLEY: Objection; asked and  
22 answered.

1 not something that we want to see happen. There are  
2 always issues. We try and address them both  
3 proactively and reactively as best we can as they  
4 come up.

5 Q. Let me ask you about that Pulaski  
6 County issue. Did that Pulaski County issue involve  
7 any allegation of fraud committed by a voter?

8 A. No. Not by a voter, no.

9 Q. Was that --

10 A. Not that's what I --

11 Q. I'm sorry. Go ahead.

12 A. Disregard.

13 Q. Sorry.

14 Did that instance in Pulaski County  
15 that you were referring to involve election official  
16 error?

17 A. Yes.

18 Q. Understood.

19 Does the State Board of Election  
20 Commissioners have any reason to doubt the integrity  
21 of the 2020 general election based on fraud?

22 A. Well, I mean, again, there's always

1 the need to be vigilant and there's also the  
2 unknown, but I think I've -- we've discussed what --  
3 or we've made available what information we have  
4 along those lines. I don't have any additional  
5 issues to raise or -- that we're aware.

6 Q. Does the State Board of Election  
7 Commissioners have any concern that the results of  
8 the Arkansas 2020 general election were inaccurate?

9 A. Well, again, that Pulaski County case  
10 has -- is qualifying that, but as a general matter,  
11 that's -- I don't think that's a concern.

12 Q. When constituents contact the State  
13 Board of Election Commissioners office and voice  
14 concerns about the integrity of the election process  
15 in Arkansas, does the State Board of Election  
16 Commissioners advise them the state board has no  
17 concerns about fraud in the 2020 general election,  
18 for example?

19 A. I think it's a bad articulation.  
20 We're always concerned about things that our  
21 Arkansans are concerned about. We advise them of  
22 the safeguards that are in place to ensure that



1 those things are as unlikely as possible in the  
2 context of our system. So I'm not going to say  
3 we're not concerned. I think that's a bad way to  
4 phrase it. I say we are concerned. Our system, the  
5 laws put in place and the execution of those laws by  
6 our county officials do a whole lot to mitigate  
7 against that danger.

8 Q. Do you tell constituents to contact  
9 you for this reason, that there are no confirmed  
10 instances of voter fraud with regard to the 2020  
11 general election?

12 A. I don't know that that phrase is used,  
13 but we would certainly articulate the various  
14 processes that make such a -- the existence of fraud  
15 difficulty and unlikely, difficult to portray,  
16 unlikely to exist.

17 Q. And you do not advise voters that  
18 there are known instances of voter fraud with regard  
19 to the 2020 general election?

20 A. It's very hard not to engage in  
21 superlatives, if I can, but I think that's the  
22 spirit of the advice. We advise what we know, that

1 we have a sound process and that we have good people  
2 who try and execute it and that we've seen good  
3 results in the past and expect the results in the  
4 future as far as elections that are secure and  
5 voters in Arkansas can have confidence in.

6 Q. And I think that you had testified  
7 much earlier in this deposition that promoting voter  
8 confidence in the integrity of our elections is  
9 important to the State Board of Election  
10 Commissioners; is that correct?

11 A. That is correct.

12 Q. I'm going to ask Mr. White to show you  
13 what I've premarked as Exhibit I, another long  
14 document.

15 (Exhibit I, No Bates numbers, A Guide  
16 to Voting, received and marked.)

17 BY MS. VELEZ:

18 Q. And it is my last exhibit.

19 A. I see the document.

20 Q. Have you ever seen this document  
21 before?

22 A. I have seen versions of this document.

# EXHIBIT L

RETRIEVED FROM DEMOCRACYDOCKET.COM

**DOCKET NOS.**  
**SBEC 2020-039**  
**SBEC 2020-041**  
**SBEC 2020-043**  
**SBEC 2020-046**  
**and**  
**SBEC 2020-051**  
**COMBINED INVESTIGATION**  
**REPORT**

May 14, 2021

**Factual Findings of the SBEC Staff Investigation**

The State Board of Election Commissioners, (SBEC) received several verified complaints that made numerous allegations. From those complaints, the SBEC approved investigation of certain allegations for the Docket Numbers listed above. The SBEC approved investigation of the following issues which were identified from the respective Staff Reports.

Staff is providing these issues based upon the combined allegations from the complaints, however, Staff is providing references for the Issue and Sub-issue within the respective case, which authorized the investigation of that issue or sub-issue. For ease of understanding and readability, the investigation and factual development is divided into three large categories, events occurring Pre-Election, Election Day, and Post-Election. Within each of these time periods, staff will address the multitude of issues alleged by the differing complaints.

Staff's investigation included reviewing the multiple complaints and identifying the issues, records, and appropriate personnel who could provide necessary information. Staff utilized numerous sources of records to provide answers and information regarding these issues. Staff submitted Notices of Investigation and Letters of Inquiry to the Pulaski County Clerk, Terri Hollingsworth; Pulaski County Judge, Barry Hyde; each Commissioner for the Pulaski County Election Commission; Director of Elections, Bryan Poe<sup>1</sup> (who has since resigned his position with Pulaski County Elections); Assistant Director of Elections, Shawn Camp; Absentee Canvasser, Catherine Dunlap; and Camille Bennett with ForARPeople. Staff submitted Arkansas Freedom of Information Requests (FOIA) to the Arkansas Claims Commission for copies of all depositions and attached exhibits taken in the Claims Commission case, *Sorvillo v. Hudson*, Claims Commission Case Number 210669. Staff submitted additional FOIA requests to Pulaski County Elections Staff and Pulaski County Clerk's Office. Staff conducted follow up interviews with Pulaski County Elections Staff, Pulaski County Clerk's Staff, and the Pulaski County Attorney, Adam Fogleman. Staff also made an onsite inspection of the Pulaski County Elections offices and rooms at the Pulaski County Regional Building. Staff reviewed numerous hours of publicly available video records on the Pulaski County Elections YouTube and Facebook accounts. From these actions, the investigation revealed the following facts.

## **I. Pre-Election Issues**

Staff has organized this investigation in a timeline format. Staff provides this information in this way to aid in following the multitude of

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<sup>1</sup> Staff submitted the Notice of Investigation and Letters of Inquiry to Mr. Poe's address on record, with a requested response date of April 19, 2020. As of the first week of May, Staff had not received a response from Mr. Poe. Staff located a current telephone number for Mr. Poe and spoke to him about the Notice. Mr. Poe reported that he moved to a new residence and claimed he had not received the mailed notice. Staff then requested his personal email so that an electronic copy could be sent to him that day. The following day, Staff mailed by first class and certified return receipt requested, hard copies of the Notice. Staff understood Mr. Poe agreed to provide his responses by Wednesday May 12, 2021. As of the close of business on May 12, 2021, Staff had not received a written response either electronically, by delivery, or by mail from Mr. Poe.

allegations and overlapping activities which are alleged to have either been a violation of election law or contributed to an alleged violation.

## A. Absentee Ballot Application Issues.

### 1. *Signatures on Application Not Compared to Voter Registration Records. (SBEC 2020-039 I.A.)*

Staff inquired of the process utilized by staff of the Pulaski County Clerk and examined how absentee ballot applications are compared to those recorded on the voter's registration. Staff directly inquired whether staff verified the signatures of absentee applications against voter registration records. Clerk Hollingsworth provided, "To the best of my knowledge our office verified every applicant's signature before we sent out an absentee ballot to that voter." See Hollingsworth Response Question 4. Staff inquired of the policy and practice utilized in the Clerk's office when processing absentee ballots. She provided a written response and provided short screenshot videos of the process through PowerProfile.

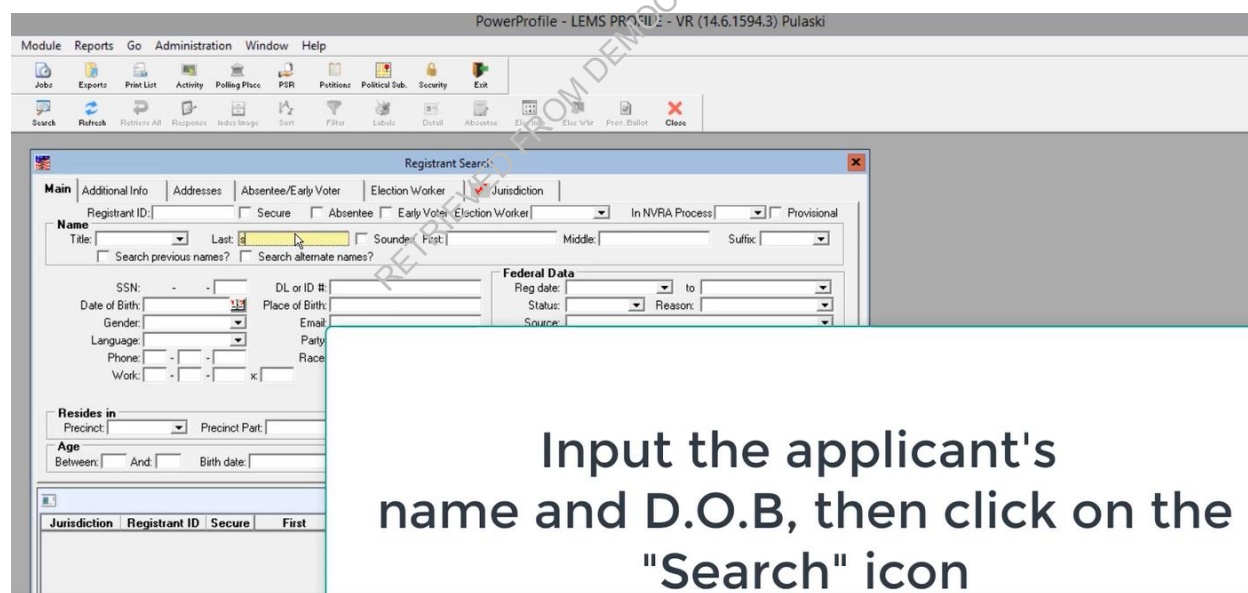


Figure 1. See Hollingsworth Response - Attachment 6.1, 6.2, 6.3 and 6.4.

The written explanation describes the process from receipt of the application through issuance of an absentee ballot. See *Id.* at Question 5. She describes the process as inputting the voter's name and Date of Birth to pull the voter's record up in the ES&S Software system. See *Id.*

The address is then verified versus the address on the application. See *Id.* The process continues until time to scan the application into the system. *Id.* The scan program is a separate utility that requires additional steps, including “verify that the registrant section information automatically populated by the system is a match with the document.” *Id.* After the application is uploaded to ES&S System, through the scan program, the application’s signature must be compared to the electronic signature recorded for the voter’s record. *Id.*

Staff inquired as to the process utilized by the Clerk’s office when there was no digital signature on the voter’s record to compare to. Clerk Hollingsworth responded that, when a record is located on the digital records, but no voter registration signature is saved, they would “check the voter history, specifically looking for recent elections such as the 2018 Primary, 2108 General, 2020 Primary or one of the recent special elections....” See *Id.* at Question 8. If there was a voter record for one of these recent elections, they would “search the retained paper poll books or early vote request sheets and attempt to obtain a signature for comparison to the application for an absentee ballot.” *Id.* If there was no recent signature to compare to, or the signature did not match, then they would “attempt to contact the voter and send a letter along with an Arkansas Voter Registration form to the address on file asking for them to complete and return the documents before we could process their absentee ballot application.” *Id.*

When asked how many voters were treated this way, to correct an absent signature, Clerk Hollingsworth provided that they “received 621 absentee ballot applications who had a matching name, address, and date of birth without a signature in the digital file to compare against the application.” See *Id.* at Question 9. The response states that they were able to confirm 591 of the 621 with the process described in question 8 above. *Id.* She claims they received 18 responses to their request for updated Voter Registration Forms, and that they ultimately identified 12 absentee ballot application requests that they did not fulfill because they did not have a current signature on file. See *Id.*

In furtherance of this allegation, staff identified a list of disqualified absentee ballots attached to Bryan Poe’s deposition, as Exhibit 7. As excerpted below, this 110-page document identifies absentee ballots that





of perjury and subject to a fine of up to ten thousand dollars (\$10,000) or imprisonment for up to ten (10) years, or both under federal laws.

I certify under penalty of perjury that I am registered to vote, and that I am the person who is registered.

Adeeya Anderson

Printed or Typed Name of Voter

1 Ridgefield Cove

Voting Residence Address of Voter

Little Rock, AR 72223

City or Town, State and Zip Code

Adeeya Anderson

Signature of Voter

05/22/1994

Date of Birth of the Voter

Signature of Bearer, Administrator, or Agent (if applicable)

**RETURN THIS APPLICATION TO YOUR COUNTY CLERK.**

You may obtain your County Clerk's return address for your Absentee Ballot Application at the following link:

<https://www.sos.arkansas.gov/uploads/elections/countyclerkforwebsite.pdf>

Figure 5.

Consequently, the records and Staff's review demonstrates that these three absentee voters submitted an application that was unsigned yet received an application that was later disqualified during canvassing.

**2. Absentee Ballots processed without an Absentee Ballot Application being provided or produced. (SBEC 2020-039 I.B.1)**

Staff utilized the same process to determine the validity of this allegation. Staff made specific inquiries regarding the allegation that absentee ballots were processed that lacked an absentee ballot application. The response indicates that the application processing system is the same is described in Hollingsworth Response Question 5. See Hollingsworth Response Question 12. Staff inquired whether some of the potentially missing applications were because of yearlong absentee ballot requests, and inquired what steps, if any, were taken to ensure an application submitted well in advance of the election is attached to the ballot materials when transferred to the Election Commission. The Response indicated that the same system and process is used regardless of when the absentee ballot application is received. See *Id.* at Question 14. When asked, whether "absentee ballots [were] submitted to the CBEC's absentee clerks that did not have the attached absentee ballot application." The response was "[o]ur office has insufficient information to answer this question." *Id.* at Question 15.

Because the answer to this question was an alleged lack of information, Staff submitted the list of twelve (12) absentee ballots that were rejected for lack of an application to the Clerk's Staff, in efforts to narrow this question and provide more concrete examples from which the allegation appears to be based. Staff is awaiting supplemental responses that may provide additional information or records for the alleged missing applications.

Staff's independent review was able to locate three (3) of the alleged missing applications from the 37,000-document production. Thus, Staff was able to identify that an application was available for three of the 12 rejected absentee ballots. However, Staff was unable to locate an application among the produced documents for the other nine (9) identified voters.

Staff also discussed the process by which applications were attached to ballot materials with Staff from the Clerk's office and with Staff from the Elections Division, and learned that when the ballot is received back, the application is printed and taped to the outside of the ballot material packet. Thus, when being placed in the ballot box for transfer from the Clerk's office to absentee Clerks, if the tape is not securely attached, some of the taped applications would be dislodged and disassociated from their ballot materials. There is no record that Staff was able to locate that would identify ballots that suffered this occurrence.

Consequently, the records and evidence produced thus far confirm this allegation, that absentee ballots were submitted by nine (9) verified absentee voters who did not have an absentee ballot application on file that was produced by the Pulaski County Clerk's office.

3. *Absentee Ballot Applications processed, and Absentee Ballots mailed when the Application lacked required information, such as missing signatures, no address or incomplete address, voters name missing on the application, incomplete application, and Date of Birth missing or incomplete. (SBEC 2020-039 I.B.2.)*

Utilizing the same methodology described above, the investigation and records identified a number of absentee voters whose ballots were rejected because they lacked required information. The missing information included a lack of a local voter's residential address that is written below the voter's verification of name and within the block including the voter's signature. Staff identified four ballot applications that allegedly missed the voter's address or contained an incomplete address. The rejected absentee ballot list identified one voter whose "name [was] not on the application." Staff located an application for this voter, an alleged Tammy R. Johnson, D.o.B. 03/31/1972 that failed to have her name. See below excerpt:

**I WILL RECEIVE MY BALLOT BY [CHECK ONE]:**

☐ Coming to the office of the county clerk by the time the county clerk's office regularly closes on the day before the election.

☐ Electronic Means\* – My email address is: \_\_\_\_\_ \*(Only available for UOCAVA voters)

☒ Mail. I request that you mail my ballot to the following address:

\_\_\_\_\_

\_\_\_\_\_

☐ Designated Bearer, Administrator, or Authorized Agent: [PRINTED NAME] \_\_\_\_\_

Note: A designated bearer may obtain or deliver absentee ballots for no more than two (2) voters per election and may only do so within the 15 days before a school, special election, preferential primary, or general election or the 7 days before a runoff or general primary election. A bearer, administrator, or agent must provide a current and valid photo ID to the clerk and must sign the register, under oath, when picking up or delivering an absentee ballot.

The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be guilty of perjury and subject to a fine of up to ten thousand dollars (\$10,000) or imprisonment for up to ten (10) years, or both under federal laws.

I certify under penalty of perjury that I am registered to vote, and that I am the person who is registered.

Printed or Typed Name of Voter <u>7700 N. Chicot Rd. #B203</u>	Signature of Voter <u><i>Rochelle Johnson</i></u>
Voting Residence Address of Voter <u>Little Rock AR 72209</u>	Date of Birth of the Voter <u>3-31-1972</u>
City or Town, State and Zip Code	Signature of Bearer, Administrator, or Agent (if applicable)

**RETURN THIS APPLICATION TO YOUR COUNTY CLERK.**

You may obtain your County Clerk's return address for your Absentee Ballot Application at the following link:  
<https://www.sos.arkansas.gov/uploads/elections/countyclerkforwebsite.pdf>

Figure 6. The voter's name is not on the document; however, her signature is.

Staff identified a Toni R. Fraser as a voter whose application had missing information according to the disqualified log. See excerpt below from the application records:

☐ Coming to the office of the county clerk by the time the county clerk's office regularly closes on the day before the election

☒ Electronic Means\* – My email address is: Toni.Fraser@itbud.com (Only available for UOCAVA voters)

☒ Mail. I request that you mail my ballot to the following address:

1912 Green Mountain Dr. #310  
Little Rock, AR 72212

☐ Designated Bearer, Administrator, or Authorized Agent: [PRINTED NAME]

Note: A designated bearer may obtain or deliver absentee ballots for no more than two (2) voters per election and may only do so within the 15 days before a school election, preferential primary, or general election or the 7 days before a runoff or general primary election. A bearer, administrator, or agent must provide a current and valid photo ID to the clerk and must sign the register, under oath, when picking up or delivering an absentee ballot.

The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be guilty of perjury and subject to a fine of up to ten thousand dollars (\$10,000) or imprisonment for up to ten (10) years, or both under federal laws.

I certify under penalty of perjury that I am registered to vote, and that I am the person who is registered.

Toni R. Fraser  
Printed or Typed Name of Voter

8/7/63  
Signature of Voter

Toni R. Fraser  
Date of Birth of the Voter

Voting Residence Address of Voter

City or Town, State and Zip Code

Signature of Bearer, Administrator, or Agent (if applicable)

Figure 7.

It appears that this application lacked the voting residence information on the voting residence address associated with the voter's signature. However, the address is included in the mailing address listed above. Staff was able to locate an application for Jarvis Rogers, it appears that it is allegedly missing the mailing address for the absentee ballot. See excerpt below:

**I WILL RECEIVE MY BALLOT BY [CHECK ONE]:**

☐ Coming to the office of the county clerk by the time the county clerk's office regularly closes on the day before the election.

☐ Electronic Means\* – My email address is: \_\_\_\_\_ (Only available for UOCAVA voters)

☒ Mail. I request that you mail my ballot to the following address:

\_\_\_\_\_

\_\_\_\_\_

☐ Designated Bearer, Administrator, or Authorized Agent: [PRINTED NAME]

Note: A designated bearer may obtain or deliver absentee ballots for no more than two (2) voters per election and may only do so within the 15 days before a school election, special election, preferential primary, or general election or the 7 days before a runoff or general primary election. A bearer, administrator, or agent must provide a current and valid photo ID to the clerk and must sign the register, under oath, when picking up or delivering an absentee ballot.

The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be guilty of perjury and subject to a fine of up to ten thousand dollars (\$10,000) or imprisonment for up to ten (10) years, or both under federal laws.

I certify under penalty of perjury that I am registered to vote, and that I am the person who is registered.

Jarvis Rogers  
Printed or Typed Name of Voter

300 Indianhead Cv. Apt 96  
Voting Residence Address of Voter

Sherwood AR 72120  
City or Town, State and Zip Code

Jarvis Rogers  
Signature of Voter

1978  
Date of Birth of the Voter

Signature of Bearer, Administrator, or Agent (if applicable)

**RECEIVED**  
OCT 8 2020  
TERRI HOLLINGSWORTH  
CLERK OF CIRCUIT COURT

**RETURN THIS APPLICATION TO YOUR COUNTY CLERK.**  
You may obtain your County Clerk's return address for your Absentee Ballot Application at the following link:  
<https://www.sos.arkansas.gov/elections/voter-information>

Figure 8.

There was one other absentee ballot identified as missing information, but Staff was unable to locate a corresponding application. That voter was identified as Hunter Paddie.

The last category of rejected absentee ballots was related to either a missing date of birth or an incomplete date of birth. Staff identified sixty (60) such voters. However, Staff believes that some on this list failed to provide their date of birth on the voter statement, as Staff located an application with a date of birth, for example see Ms. Sandra Attaway's application:

The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be guilty of perjury and subject to a fine of up to ten thousand dollars (\$10,000) or imprisonment for up to ten (10) years, or both under federal laws.

I certify under penalty of perjury that I am registered to vote, and that I am the person who is registered.

Sandra Attaway  
Printed or Typed Name of Voter

4411 Valley Ranch dr  
Voting Residence Address of Voter

Little Rock AR 72223  
City or Town, State and Zip Code

Sandra Attaway  
Signature of Voter

11/21/1948  
Date of Birth of the Voter

Misty Bester  
Signature of Bearer, Administrator, or Agent (if applicable)

**RETURN THIS APPLICATION TO YOUR COUNTY CLERK.**  
You may obtain your County Clerk's return address for your Absentee Ballot Application at the following link:  
<https://www.sos.arkansas.gov/elections/voter-information>

Figure 9.

However, Staff did identify applications that clearly lacked a date of birth. For such an example, see voter Simeon Anikwe's application. It clearly lacks a date of birth. See excerpt below:

The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be guilty of perjury and subject to a fine of up to ten thousand dollars (\$10,000) or imprisonment for up to ten (10) years, or both under federal laws.

I certify under penalty of perjury that I am registered to vote, and that I am the person who is registered.

SIMEON ANIKWE  
Printed or Typed Name of Voter

5701 Pecan Lake Rd.  
Voting Residence Address of Voter

Little Rock, AR 72204  
City or Town, State and Zip Code

Simeon I. Anikwe  
Signature of Voter

Date of Birth of the Voter

Signature of Bearer, Administrator, or Agent (if applicable)

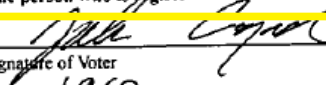
**RETURN THIS APPLICATION TO YOUR COUNTY CLERK.**  
You may obtain your County Clerk's return address for your Absentee Ballot Application at the following link:  
<https://www.sos.arkansas.gov/elections/voter-information>

Figure 10.

Staff also located applications that had only a partial date of birth, such as the one for Mr. John A. Cayard.

I certify under penalty of perjury that I am registered to vote, and that I am the person who is registered.

John Allen Cayard  
Printed or Typed Name of Voter  
2209 Crestwood Rd  
Voting Residence Address of Voter  
North Little Rock, AR 72116  
City or Town, State and Zip Code

  
Signature of Voter  
1963  
Date of Birth of the Voter  
\_\_\_\_\_  
Signature of Bearer, Administrator, or Agent (if applicable)

RETURN THIS APPLICATION TO YOUR COUNTY CLERK. CALL (501) 340-8336 FOR THE CLERK'S ADDRESS.

You may obtain your County Clerk's return address for your Absentee Ballot Application at the following link:

[http://www.sos.arkansas.gov/elections/Documents/county\\_clerks\\_for\\_website.pdf](http://www.sos.arkansas.gov/elections/Documents/county_clerks_for_website.pdf)

Figure 11.

Staff has contacted the Clerk's Office seeking updated information that may resolve these application deficiencies. During the conversation with the Clerk's staff, they advised they would make their best efforts to address these issues and provide any supplemental information, if they have it. Staff made this request on May 11, 2021 and understands that time is a factor in addressing these issues. However, based on the records request for all applications, and the absentee ballot rejection list produced by the Pulaski County elections staff, it appears that at least some absentee ballot applications were processed that lacked required information.

Consequently, the investigation and records demonstrate that at least some of the 25,000 plus absentee ballots were processed and submitted with deficient applications. Based on the disqualification list, Staff located approximately 86 applications that were reported to contain a deficiency. However, Staff notes that some of the missing date of birth references appear to reflect an absence of the date of birth on the voter statement rather than the application. In reality, the number of absentee ballot applications with an alleged deficiency is somewhat less than the 86 identified voters. Ultimately, it appears that this allegation is substantiated.

**B. Precinct assignment, Street file change for a Street Segment of Precinct 63 changed to Precinct 7. (SBEC 2020-039 III.A.1. and III.A.2.; and SBEC 2020-046 I.A.1.)**

Staff would direct the SBEC to the investigation report provided for SBEC 2020-029, wherein this specific issue was addressed and identified. Staff has received notice that the Offer of Settlement in that case has

been rejected and thus the underlying allegation has not been resolved. As such, Staff directs the Board to the investigative facts developed in SBEC 2020-029, as applicable to these allegations. Staff has re-produced that investigative report herein, as there is no difference in the facts.

Staff prepared a Notice of Investigation and Letters of Inquiry to the Pulaski County Clerk as part of its investigation SBEC 2020-029. Staff received written responses to those questions, including attachments and a deposition of Mr. Jason Kennedy, taken in the case of *Sorvillo v. Hudson – Arkansas Claims Commission*.

### **Response – Pulaski County Clerk – Terri Hollingsworth**

Beginning at Question 4, the Response identified Deputy Clerks Michael Razer and N'ell Jones as the persons within the office who accessed the street files for Complainant within the six months prior to November 3, 2020. It appears that Mr. Razer accessed the Street Segment File on November 4, 2020 to change the segment back to Precinct 063.04. This record shows N'ell Jones as the Deputy Clerk who made the change for this Street Segment on October 30, 2020 at 2:41 p.m.

In Question 5, Staff asked, “[w]ere any street files for Precinct 63 changed to Precinct 7 within 6 months before November 3, 2020? [and] [i]f yes, which street files were accessed and who with your office accessed these files?” The Clerk responded, “Street segment #294068, a small section of Stewart Road, Little Rock. Moved at 14:41:03 on October 30, 2020 from precinct 63.04 to precinct 7.02. Returned to correct precinct at 8:58:36 on November 4, 2020.” The records confirm this statement.



Segment Demographics			
Segment ID: 294068	Precinct Part: 063.04	<input checked="" type="checkbox"/> Permanent?	
Low Street #: 425	High Street #: 2203	Odd/Even: Odd	<input type="checkbox"/> Prompt for Mailing?
Dir Prefix:	Street Name: Stewart	Type: Rd	Dir Suffix:
City: Little Rock	Zip Code: 72223	Zone Type:	
<input type="checkbox"/> Multi-unit Residence?			
Low Unit Nbr.		High Unit Nbr:	

Districts	Polling Place(s)
Congressional District Congressional Dist 002 Court of Appeals Court of Appeals Dist 006 Judicial District Judicial Dist 06 Judicial District Subdivi Judicial Dist Subd6 2 Justice of the Peace JP 01 Municipality Little Rock School District Pulaski County Special School School District Zone Jacksonville-North Pulaski SZ1 State Representative State Rep Dist 032 State Senate State Senate Dist 033 Township Big Rock Township	Default: Martindale Baptist Church ADA: Y 18900 E. Colonel Glenn Rd Little Rock, AR 72210  Alternate: ADA:

Activity					
Datetime Logged	Activity Type	Previous Value	Changed To	User	Workstation
11/4/2020 08:58 AM	Update	Pct Pt:007.02	Pct Pt 063.04	Razer, Michael	PRIM-ARCTX03
10/30/2020 02:41 PM	Update	Pct Pt:063.04	Pct Pt:007.02	Jones, N'ell	PRIM-ARCTX02

Figure 12.

In responding Question 6, asking what explanation the Clerk's office had for this precinct change, the Response provided, "Due to Covid-19 protocols, a significant number of employees were unavailable to work the day in question. As a result, the change was made in error by an employee who was assisting with the administration of the election."



The Response demonstrates that 22 registrations were affected by the precinct change, but that of the 22, only 7 voters are identified as directly impacted and given the incorrect ballot.<sup>2</sup>

Pulaski  
 Processed: 03/08/2021 1:40 PM  
 Printed: 03/08/2021 1:40 PM

### Street Segment Detail Report

**Registrants Residing on Segment:**

Street No.	Unit No.	Registrant ID	Name	Status	Date of Birth
425		1497820	Lawrence, Wayne Edward	R	12/10/1936
1021		1437125	Grisham, Dannetta	A	5/30/1963
1021		1652685	Hutchinson, Ronald Wayne	A	4/6/1948
1109		1619064	Bertram, Janet Lea	A	11/4/1954
1203		1694686	Witkowski, James J	A	7/3/1962
1209		3197388	Bauer, Michael A	A	10/20/1980
1225		4344231	Hennard, Bethany Lynn	A	8/5/1990
1225		3648918	Hennard, Dustin Ray	A	8/23/1978
1303		1725431	Scherrey, Patrick Whittaker	A	3/11/1958
1401		63767	Burks, Kelly Dianna	A	5/12/1977
1401		2029511	Burks, Jeffery L	R	7/30/1972
1401		1529711	Burks, Jeff L	A	7/30/1972
1601		1443097	Manning, Thomas Allen, III	A	10/15/1975
1601		1438576	Manning, Nirvana Afsordeh	A	4/16/1976
1615		1266199	Chandler, Benjamin L	A	3/10/1977
1615		1266158	Chandler, Angela Lou	A	11/15/1976
1701		1355475	Deneke, Matthew Gordin	A	5/31/1976
1809		3438130	Gunther, Harriett Rush	A	10/28/1991
1815		1455900	Wheeler, Dustin Shane	A	1/12/1974
1815		1357362	Wheeler, Teresa Lynn	A	2/1/1976
1901		1577742	Ward, Melinda	A	2/18/1964
1917		1547463	Richards, Robert S	A	7/29/1964

Statistics (on Segment)	
Active:	20
Inactive:	0
Suspense:	0
Not Eligible:	0
Removable:	2
Not Registered:	0
<b>Total Registrants:</b>	<b>22</b>

Figure 13.

<sup>2</sup> Staff notes that of the twenty-two (22) potential registrations impacted by the precinct change, 20 voted either early or on election day. Staff also noted two entries that appear to be the same person, one is identified as Mr. Jeff L. Burks DOB 7-30-1972 and the other is Mr. Jeffery L. Burks 07-30-1972, both of 1401 Stewart Road. Staff also notes that the Response only indicates 7 voters were impacted by the precinct change, but that Ms. Angela Chandler of 1615 Stewart Road may be impacted. She voted at 4:21 pm October 30, 2020, but the street file was changed at 2:41 pm on October 30, 2020. Also, Staff notes that a Patrick Scherrey voted on October 31, 2020 and may have been impacted as well. Thus, it is plausible they were both given the incorrect ballot if the poll tablet was connected to Wi-Fi and updated either throughout the day or updated each evening.

The seven voters identified by the Respondent as directly impacted by the change were:

1. Janet Bertram, 1109 Stewart Rd.
2. Michael A. Bauer, 1209 Stewart Rd.
3. Thomas Manning, 1601 Stewart Rd.
4. Matthew Deneke, 1701 Stewart Rd.
5. Teresa Wheeler, 1815 Stewart Rd.
6. Dustin Wheeler, 1815 Stewart Rd.
7. Robert Richards, 1917 Stewart Rd.

Street #	Registrant ID	Name	Status	Voted	How	Date	Time	Location-Notes
425	1497820	Lawrence, Wayne Edward	R	No				Death Notification
1021	1652685	Hutchinson, Ronald Wayne	A	Yes	Early	10/27/2020	11:19:41 AM	Adolphine Fletcher Terry Library
1021	1437125	Grisham, Dannetta	A	Yes	Early	10/27/2020	11:51:33 AM	Adolphine Fletcher Terry Library
1109	1619064	Bertram, Janet	A	Yes	Polling Place	11/3/2020	9:48:21 AM	Martindale Baptist Church
1203	1694686	Witkowski, James	A	Yes	Early	10/20/2020	11:01:34 AM	Roosevelt Thompson Library
1209	3197388	Bauer, Michael A.	A	Yes	Polling Place	11/3/2020	11:33:00 PM	Immaculate Heart of Mary
1225	4344231	Hennard, Bethany	A	Yes	Early	10/29/2020	8:56:27 AM	Roosevelt Thompson Library
1225	3648918	Hennard, Dustin	A	Yes	Early	10/29/2020	10:05:00 AM	Roosevelt Thompson Library
1303	1725431	Scherrey, Patrick	A	Yes	Early	10/31/2020	12:24:44 PM	Roosevelt Thompson Library
1401	63767	Burks, Kelly	A	Yes	Early	10/28/2020	8:16:07 AM	Roosevelt Thompson Library
1401	1529711	Burks, Jeff	A	Yes	Early	10/28/2020	8:15:53 AM	Roosevelt Thompson Library
1601	1438576	Manning, Nirvana	A	Yes	Early	10/30/2020	8:12:33 AM	Roosevelt Thompson Library
1601	1443097	Manning, Thomas	A	Yes	Vote Center	11/3/2020	3:01:00 PM	Roosevelt Thompson Library
1615	1266199	Chandler, Benjamin	A	Yes	Early	10/21/2020	4:49:57 PM	Roosevelt Thompson Library
1615	1266158	Chandler, Angela	A	Yes	Early	10/30/2020	4:21:09 PM	Roosevelt Thompson Library
1701	1355475	Deneke, Matthew	A	Yes	Vote Center	11/3/2020	4:38:18 PM	Roosevelt Thompson Library
1809	3438130	Gunther, Harriett	A	Yes	Early	10/27/2020	5:25:59 PM	Roosevelt Thompson Library
1815	1357362	Wheeler, Teresa	A	Yes	Vote Center	11/3/2020	3:56:12 PM	Sidney S. McMath Library
1815	1455900	Wheeler, Dustin	A	Yes	Vote Center	11/3/2020	3:55:06 PM	Sidney S. McMath Library
1901	1577742	Ward, Melinda	A	Yes	Early	10/21/2020	2:40:11 PM	John Gould Fletcher Library
1917	1547463	Richards, Robert	A	Yes	Vote Center	11/3/2020	3:03:24 PM	Roosevelt Thompson Library

Figure 14.

### Supplemental Response – Jason Kennedy

Staff contacted Mr. Kennedy for clarification on the provided records. Staff learned that the Voter Registration office was down approximately 15 workers on October 30, 2020 because of a possible Covid exposure within the office. Mr. Kennedy explained that he brought in other Deputy Clerk personnel to help process the county-to-county transfers that were all due on October 30, 2020. October 30<sup>th</sup> was four days before election day and thus the deadline to complete these transfers. He explained that Deputy Clerk N'ell Jones was assisting the voter registration office.

Mr. Kennedy provided Deputy Clerk Jones' activity report for October 30, 2020. The change occurred at 2:41 p.m. and Deputy Jones

appears to have been processing voter registration changes and applications. On October 30, 2020 she processed 19 voter registration records. Staff counted the precinct change in this allegation as one record change. At 2:34, she processed a Chloe Nicole Willis. At 2:41, it appears she accessed the street segment file.

10/30/2020 02 41 PM	njones	063 04	1266158	Mail - MAI1
Registrant Precinct Part Change	PRIM-ARCTX02	007 02	Angela Lou Chandler	Optional
Pulaski	Street File			
10/30/2020 02 41 PM	njones	063 04	63767	Dept Of Motor Vehicles (With Licen
Registrant Precinct Part Change	PRIM-ARCTX02	007 02	Kelly Dianna Burks	Optional
Pulaski	Street File			
10/30/2020 02 34 PM	njones	I	3828261	Other - OTH
Status	PRIM-ARCTX02	A	Chloe Nicole Willis	Optional
Pulaski	Voter Registration			
10/30/2020 02 34 PM	njones	OYM	3828261	Other - OTH
Status Reason	PRIM-ARCTX02		Chloe Nicole Willis	Optional
Pulaski	Voter Registration			

Figure 15.

According to the activity report, all of the twenty-two (22) registrants on Street Segment #294068 were changed at the same time, 2:41 p.m. Complainant's registrant record was one of the twenty-two changed at that time.

10/30/2020 02 41 PM	njones	063 04	1357362	Mail - MAI1
Registrant Precinct Part Change	PRIM-ARCTX02	007 02	Teresa Lynn Wheeler	Optional
Pulaski	Street File			

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Pulaski					Processed 04/07/2021 1 43 PM
					Printed 04/07/2021 1 43 PM
Activity Report					
Datetime Logged	User	Previous Value	Registrant Id	Source Of Info	
Activity Type	Workstation	Changed To	Name	Party	
Jurisdiction	Module	Match			

Figure 16.

Staff is unclear as to why Clerk Jones was accessing the street segment file, although it is sometimes necessary to complete the registration for new voters or transferred voters. Staff also notes that each new voter registration record appears to be assigned a sequentially higher registrant ID number.

Staff discussed with Mr. Kennedy why he thought Deputy Clerk Jones was accessing this Street Segment File, and he believed that she was assisting in transferring voters into the County and processing paperwork for such voters. He states that changing a street file assignment is not an overly complicated task and can occur with a few clicks on the computer. Staff understands that accessing and changing a precinct assignment with the Street Segment file is achievable with a couple of clicks and selection from a drop-down box.

A voter record change begins with a Registrant Search, Step 1. If the street does not auto-populate, then the Clerk may conduct a Street file search, Step 2. That brings up a list of street files, that can be selected to add or verify the address range for that specific Street File Segment, Step 3. It is in the Street Segment Maintenance window that the precinct can be changed, as Staff understands the system's operation, Step 4.

The screenshot displays the Voter Registration System interface with four steps highlighted by arrows:

- Step 1: Registrant Search** - The top window with tabs for Main, Additional Info, Addresses, Absentee/Early Voter, Election, and Jurisdiction. It includes fields for Name, SSN, Date of Birth, Gender, Language, Phone, Work, and Resides in.
- Step 2: Street File Search** - A window titled "Street File Search" with a "Search By" section and a "Matching Street Seg" table.
- Step 3: Matching Street Seg** - A table showing matching street segments for Jurisdiction Pulaski.
- Step 4: Street Segment Maintenance - 294782 (Pulaski)** - A window for editing a street segment. It includes fields for Segment ID, Precinct Part (114.01), Low Street #, High Street #, Dir Prefix, City, Zip Code, and Zone Type. It also has a "Multi-unit Residence?" section and a "Polling Places" section.

Figure 17

Once the Deputy Clerk is at the Street Segment Maintenance window, selecting the precinct is simply a matter of clicking the drop-down box such as:

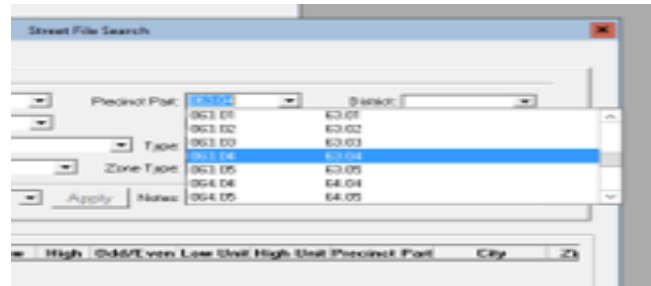


Figure 18.

If the Deputy Clerk selects one of these drop-down assignments, then that Street Segment file is changed to the new precinct. When this change occurs in the system, Staff is unaware of any systematic process that would alert the Deputy Clerk, supervisors, or election officials that the Street Segment File assigned Precinct has changed, at least until a voter raises an issue with it. Changing precinct assignments is a necessary part of Precinct Voter Registration List maintenance as a precinct that may be out of the city, which is later annexed into the city, would require an assignment change.

### **Response by Deputy Clerk - N'ell Jones**

Staff prepared and provided Deputy Clerk Jones Notice of Investigation and Letter of Inquiries to which she responded. In response to the question regarding any others who may have information about the allegations, she provided a list of names of deputy clerks who provided election related duties. She completed that response stating that these individuals can “attest to the fact that adequate training was not provided for the 2020 general election.” See Jones Response Question 2.

Regarding the specific incident on October 30, 2020, and Staff’s questions seeking an explanation as to why the Street Segment was changed, Deputy Clerk Jones does not recall. She states further that she cannot explain a process that she “does not recall performing.” See *Id.* at Question 4. When asked if she notified anyone in management when the street file was changed, she again reiterated that she did not recall. See *Id.* at Question 5. Staff inquired as to whether there were any other potential records or documents that would be completed at the time a Deputy Clerk made a change to a street file, and she responded that she is “unable to answer [that] question.” See *Id.* at Question 6.

In response to Staff's broad question regarding any additional information, Deputy Clerk Jones provided some insightful information. She responded that while she does not recall the specifics of the incident in question, she states that she did not receive "adequate training and did not feel confident enough to be working in the system." See *Id.* at Question 7. She continued, that she voiced these concerns to Mr. Jason Kennedy, but he indicated he needed assistance as the office was "understaffed." *Id.* She indicates that she was scheduled to work election related duties on October 15<sup>th</sup>, October 22<sup>nd</sup>, October 29<sup>th</sup>, and October 30<sup>th</sup>. *Id.* On October 15<sup>th</sup> she was initially assigned to work the phones, but she expressed her concerns about the adequacy of her training on operation of the voter system. She was then directed to report to Mr. Tom Barnes, who assigned her mailing related tasks instead. She continued doing mailing related duties on October 22, and 29<sup>th</sup>. *Id.* Finally, on October 30, 2020 she was assigned to working the phones, and again voiced her concerns about her "lack of knowledge" and the amount of her training. *Id.* According to Deputy Clerk Jones, Mr. Kennedy stated "that her presence was needed because the office was understaffed due to concerns of covid-19." *Id.* She states she continued to voice her concerns about having "no proper training of the voter system." *Id.*

### **C. Limited and Restricted Access to County Buildings – Pre-Election.**

Allegations were made regarding access of county buildings, including the County Courthouse which houses the County Clerk and the County Regional Building which houses the Pulaski County Elections offices. Staff recognized that different locations posed different challenges to the public in their right to access government services associated with the 2020 General Election. Because these two locations serve different purposes, Staff divided the investigation into two areas of inquiry, such that the uses for each location could be examined. As part of this examination, Staff inquired about what impacts the County Judge's Covid-19 closures had and what, if any, alternative steps were taken to accommodate voter access to necessary voting procedures and processes.

1. Courthouse (*SBEC 2020-039 II.A.*)

Staff inquired of the County Clerk regarding what, if any, limitations the closure of the County Courthouse had on the ability of absentee voters to access the Clerk's office to vote via absentee. Staff directly asked if the closure orders "prevent[ed] absentee voters from returning their absentee ballot applications or absentee ballots." To which the Clerk responded, "No, the closure of the County Courthouse did not prevent voters from returning their absentee ballot applications or their absentee ballots." See Hollingsworth Response Question 22. She continued, "[v]oters were able to return their absentee ballot applications electronically, in person or by mail." *Id.* She completed her response to this question with, "[v]oters were able to return their absentee ballots in person, by designated bearer or via the mail." *Id.*

When asked what steps were taken to accommodate absentee voters, Clerk Hollingsworth stated that her office established a desk at the Spring Street entrance to serve voters. *Id.* at Question 23. She continued that, because of the limited space in that area, her office then set up a "walk-up tent on the sidewalk between 2<sup>nd</sup> and Spring Street and the 2<sup>nd</sup> and Broadway, to alleviate some of the wait time for voters to return absentee ballot applications and absentee ballots." *Id.* She stated the tents remained in service during rain and freezing temperatures. *Id.*

Clerk Hollingsworth continued in response to Question 25 describing the steps her office took to anticipate a large absentee voter turnout, address concerns of Covid19, to protect voters and staff, and to handle the election. Besides the walk-up tents described above, she described working with the City of Little Rock and Pulaski County Government to "shut down 2<sup>nd</sup> Street between Spring Street and Broadway to accept absentee applications and ballots." See *Id.* at Question 25. She continued, that voters could either walk-up or drive through these locations. *Id.* She stated that voter identification was required, and the voters were processed as they would be processed had they entered the building. *Id.*

Lastly, Staff inquired as to whether her office was available to receive absentee ballots during all statutory required times, to which she replied, "Yes." See *Id.* at Question 26. She continued by describing the



use of the desk inside the building at the Spring Street entrance, then expansion to the walk-up and eventually the use of drive-through options also as means to accommodate voters. *Id.* She concluded that on Election Day, her staff set up to accept designated bearer and administrator absentee ballots, and at 6 p.m., moved back into the Spring Street entrance where they accepted ballots until 7:30 p.m. *Id.*

Staff, as part of the election monitoring with foreign visitors observed the walk-up tents and drive-through tents operating as described by Clerk Hollingsworth. The section of 2<sup>nd</sup> Street between Spring and Broadway was closed to normal traffic, but voters could receive and return election material as if they were being processed inside at the Clerk's counter. Staff also noted that identification was being checked and signatures were being captured from voters as required. Staff did not observe any deficiencies in this process while present.

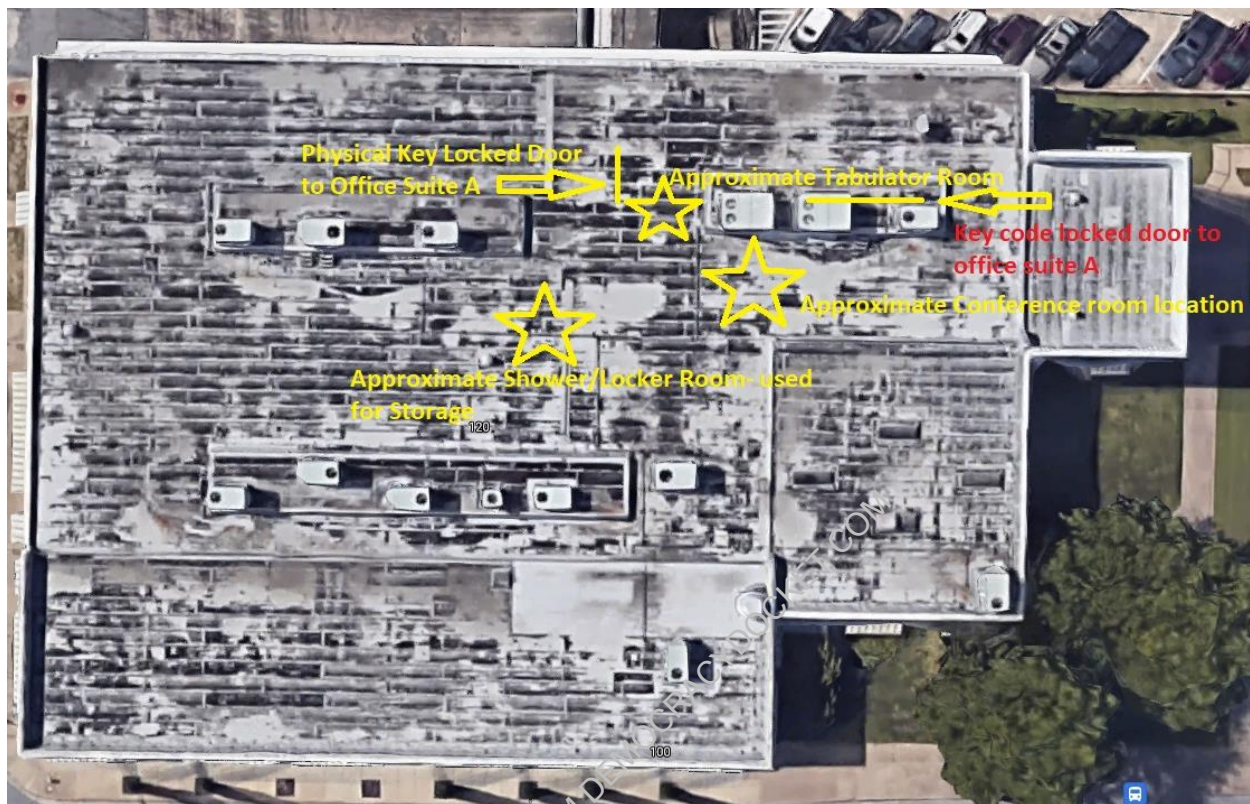
Consequently, the statements by Clerk Hollingsworth, combined with the observations of Staff members who were present on October 19, 2020 and observed the walk-up and drive-through operations, confirm that voters were able to access the Clerk's officials to process their absentee ballot materials. The evidence produced and identified by this investigation does not support this allegation. While voters were limited in their ability to physically enter the County Courthouse, the County provided sufficient alternative locations to service the needs of voters and thus met the legal requirements of the County Clerk.

**2. Access to the County Regional Building (SBEC 2020-039 II.B.2. and SBEC 2020-051 I.B.1.)**

Staff's investigation into this allegation focused on the accessibility of the County Regional Building, and in-particular the County Election Division's suite located at 501 W. Markham, Suite A. To understand this allegation, it is necessary to understand the layout of this location. As approximately depicted in the illustration, this building serves several functions. The building faces Markham Street, with its primary public entrance served by the door on the North Side of the Building, facing Markham. Staff noted on several visits to the building both before and after the election cycle, this door was routinely locked. To gain access to



the building, a visitor would have to contact a person inside the building to come open the door.

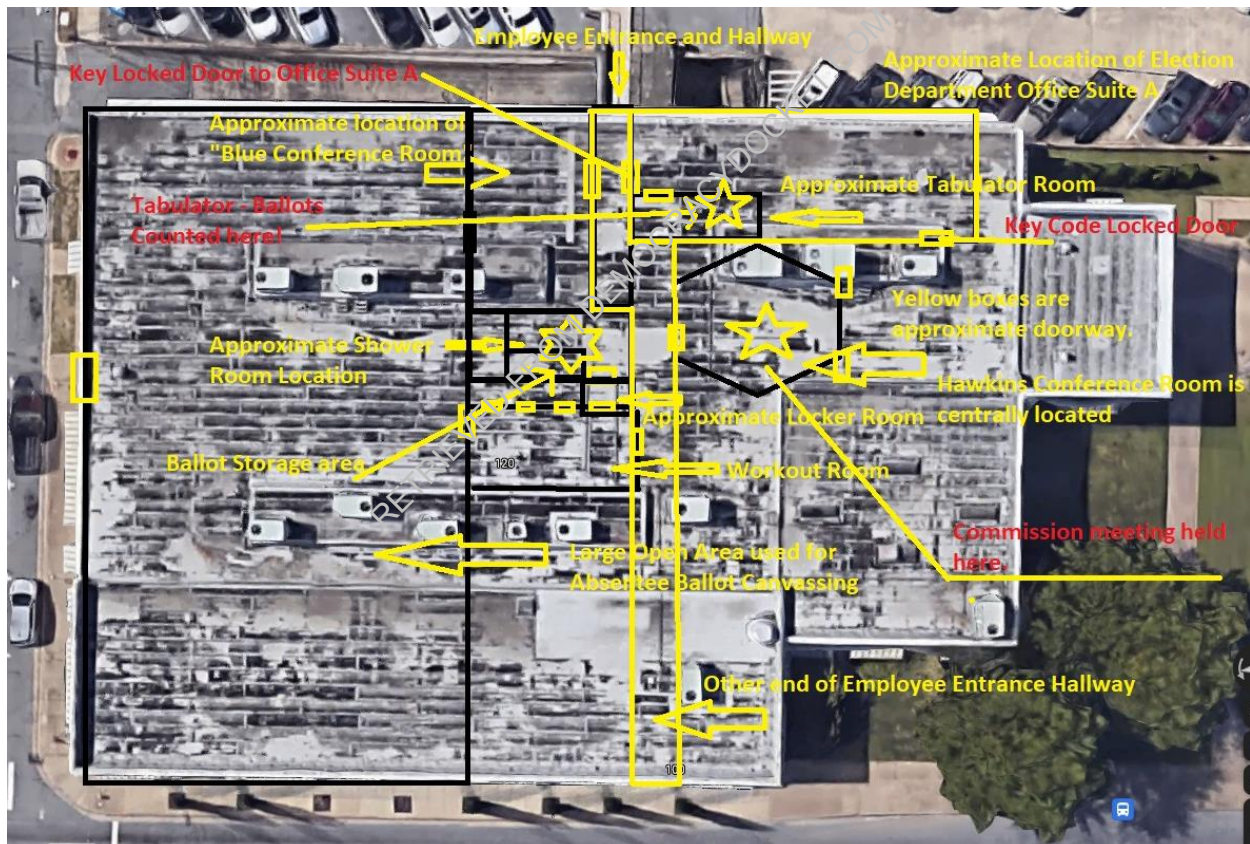


Google Map Image 1.

Upon entry through the primary entrance, the lobby area is a common area that serves three sub-areas. To the West side are the offices of Metroplan. Directly ahead, which would be south from the primary entrance, is a centrally located conference room. This conference room occupies the south wall of the lobby area and has two doors for entry. One door is located on the conference room's north west corner and the second is located on the conference room's north east corner. These doors also represent the south west and south east corners of the lobby area. To the western side of this area is a glass door and wall that serves as the primary public entrance to the Pulaski County Elections office, known as Suite A. The internal public entrance to the election division offices, which represents the western side of the common lobby area, is secured by a keypad locked door. Thus, access to the election division

offices, within the county regional building, requires the keypad code or access allowed by a staff member.

The election division offices represent the western third of the building through the midline of the building from North to South. As observed on the overhead image, there is an employee entrance on the western side of the building which adjoins the western side parking lot. This entrance way connects to a hallway which bisects the building from approximately the north half and south half of the building. The election division offices have a doorway that exits their office suite on the southside and connects to the employee entrance hallway which bisects the building north to south. This door is key locked and a physical tumbler turning type key is required to access this door.



Google Map Image 2.

The election division offices are located within the building and only accessible through the primary entrance on the north side of the building and then through the keypad locked interior glass door, or through the key locked doorway that connects to the employee entrance which is



keycard code locked. Thus, to access the election division office, a person must either gain entry to the primary public entrance and then through the keypad election division entrance or have a keycard to access the building from the employee entrance, then have a physical key to open the rear office door to the election division office suite.

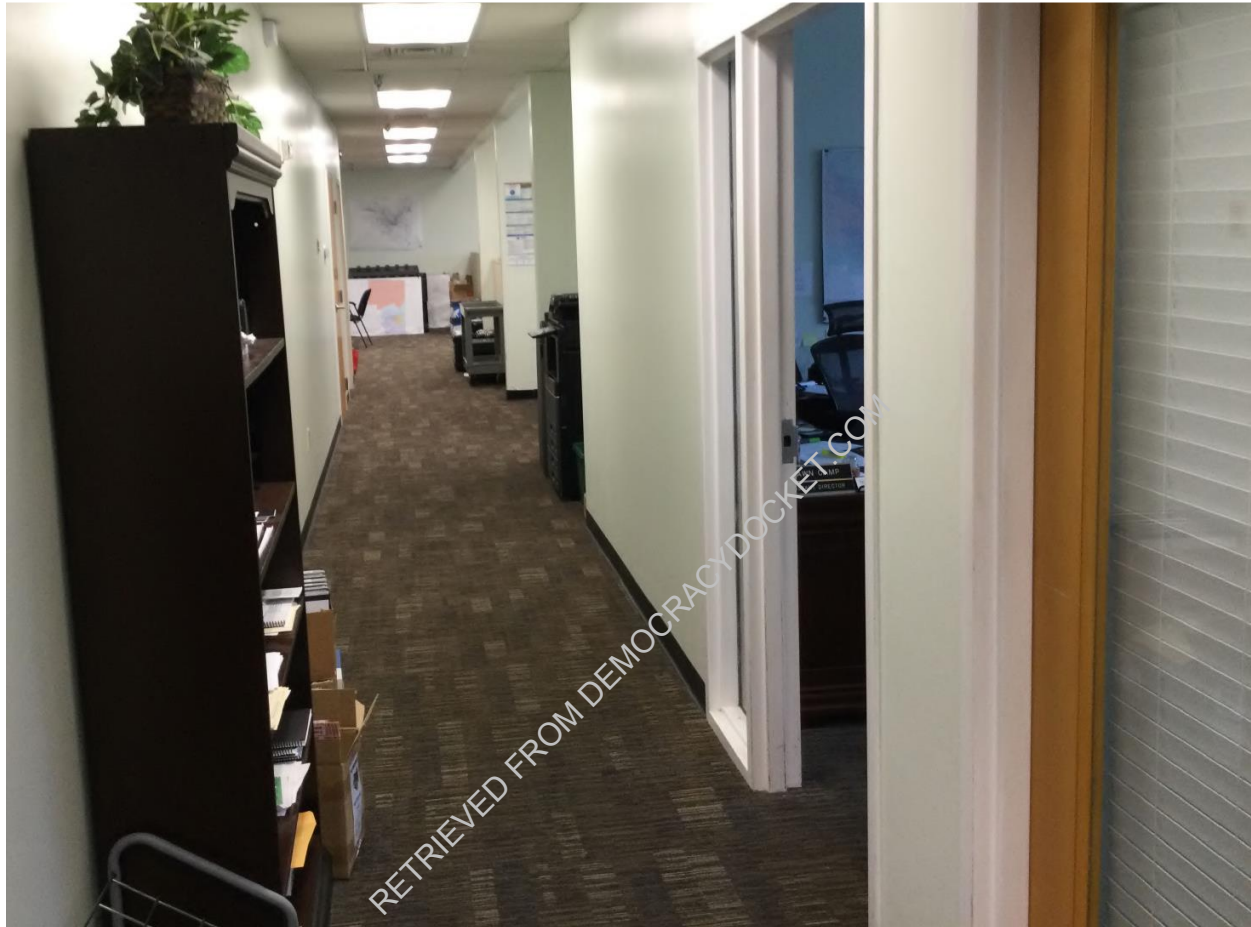
Once in the election division office, there is a receptionist desk to the immediate right of the interior keypad locked door.



Onsight Inspection photo 1.

There are two offices on the western wall of the suite, the first door accesses the Directors office. Thus, that office represents the north western most portion of the office suite. The Assistant Directors office is next and is closed by a door. Both doors have large glass panels. The

Director's door has blinds that can be closed over the window in the door. The Assistant director's door does not have blinds on it. The hallway that connects the front area, or the northern end of the office suite opens into a common work area.



Onsight Inspection photo 2.

To the west of this common area are several cubical workstations. To the left, or eastern side of the common area is the tabulation room. The tabulation room has both a wooden door that is locked by a physical key and a large observation window so that personnel tabulating ballots on the DS450 can be observed from the common area. Election related materials are stored and processed in the common area of the office suite and in the offices and cubicles of office staff during the lead up to an election.



Onsight Inspection photo 3.

Directly across the employee entrance hallway from the southernmost rear physically locked door of the election division office is a relatively large conference room which is referred to as the “Blue Room.” Election related materials are staged and stored in this room as part of the preparations for an upcoming election.





Onsight Inspection photo 4.

With this description, Staff turns towards the evidence adduced regarding the limitations placed on election commissioners' access to the County Regional Building and election division offices in particular.

Staff provided written questions to Assistant Director of Election, Shawn Camp, regarding access to election division offices before, during, and after the election. Mr. Camp also filed a complaint, docketed as SBEC 2020-043, regarding his interactions with Chairwoman Gomez and her desired access to the election division offices on election day. That interaction is detailed later in this report. However, for purposes of this issue, his statement, signed under penalty of perjury within the

complaint is relevant, wherein he stated, “Election Commission office (501 W. Markham, Suite A) which is closed to everyone except Staff per Pulaski County Judge Barry Hyde’s COVID 19 Order.” See SBEC 2020-043 Complaint page 2 – Event 1. He continued, “My understanding was that Commissioners, Poll Watchers, and the media would be allowed in the Commission office beginning Election Night to view the Election Night Reporting process through the certification of the election on 11/13/2020.”

In response to Staff questions about whether the “County Judge Order direct[ed] PCEC staff to prevent PCBEC Election Commissioners from entering PCEC building or any part of the PCEC Building, he provided a detailed response. He stated, “the County Judge never ordered Election Department Staff to prevent any specific individual or group of individuals from entering 501 West Markham in part or in total.” See Camp Response Question 19. He continued, couching his answer as “Any PCBEC member or members of the public could access the building at any time that a member of the Election Department staff was available to let them in the door.” He continued, that his “understanding [was] that it was at the discretion of the Director of Elections to implement the County Judge’s COVID19 Order and determine who was allowed in various spaces and under what conditions.” *Id.* He states, that one area where access was “curtailed” was the Election Department staff office (Suite A) when “no election related activities that are required by Arkansas law to be open to the public were being conducted.” *Id.* Only when “activities that were required by Arkansas law to be open to the public began to take place in the Election Department staff office it was open to the PCBEC, Poll watchers, representatives of the public and other interested parties. *Id.*

He provided in response to Question 20, that his “understanding on 11/3/2020 was that only Election Department staff were allowed into the staff office (Suite A) from the date of the County Judge’s order went into effect until election night, 11/3/2020, when election related activities that are required by Arkansas law to be open to the public were to begin and continuing through the official certification of the election results.” *Id.* at Question 20.

He further stated that election commissioners “were given full access to all parts of the building while Election Department Staff were present except for the Election Department Staff offices during the time outlined in question #20.” *Id.* at Question 21. Access to the building by the PCBEC or the public was available “any time that a member of the Election Department staff was available to let them in the door.” *Id.*

Regarding the Commissioner use of the “Corby” key card and employee entrance, he stated that “[a]ny PCBEC member or member of the public [who presumably has a Corby card] could access any part [of] the building they were authorized in at any time that a member of the Election Department staff was available to let them in the door.” *Id.* at Question 22. He states that, without the County Judge Order, his understanding is that the building and its constituent parts are open to the public and PCBEC members. *Id.* at Question 23. Absentee Ballots were first transferred to the Regional County Building on October 6, 2020. See *Id.* at Question 25. When asked if PCBEC members were prevented from accessing the location where absentee ballots were stored, he states that to his knowledge “no member of the PCBEC ever requested entry into the absentee ballot secure storage room.” *Id.* at Question 26.

When asked to describe any instance where an election official was denied from accessing any portion of the PCEC office building, he stated that since institution of the Judge’s Order on March 14, 2020, he observed “Election Department staff deny hundreds of people, including election officials, access to the staff offices.” *Id.* at Question 27.

Commissioner Stahr testified in her deposition that the Commissioners have an access card that would allow them in the employee entrance, but that they did not “have access to the physical offices, training room, conference rooms, ballot rooms, any other rooms with – that is under the election commission.” Stahr Dep. Part 1 at 120. She continued that they do not have keys, or codes, to access the election divisions offices where election materials are located. *Id.* Furthermore, in response to Staff questions, she stated that she was denied “access to the office and all rooms maintained by the PCEC, including our meeting rooms from April 2020 through election day.” See Stahr Responses Question 6. She continued, that on October 20, she attempted to enter



the offices during early voting and was denied access. *Id.* at Question 8. She stated that she was initially denied access by Betty Green who works the receptionist desk. She claims Ms. Green told her that “Commissioners were not allowed in the offices where election related activities were being done.” *Id.* She stated that, once Ms. Green moved out of the way, she entered the offices anyway. *Id.* She stated that she observed poll workers and other groups had a code to open the keypad locked door.

Commissioner Gomez recounted an incident on the Friday before beginning of early voting wherein she was denied access to the to the building while attempting to assist a voter who had questions about her absentee ballot. See Gomez Responses Question 6. She stated that Ms. Green initially came to the door, but relented and summoned Director Poe. *Id.* She stated that Director Poe “refused to open the door.”

County Judge Hyde provided written responses regarding the impact and intended effect of his Emergency Orders. In response to staff’s question number 8, he states, “I gave no directives or subsequent instruction to staff or any other person to prevent any Pulaski County Board of Election Commissioner, or any officials utilizing county facilities from accessing county buildings, including the Pulaski County Regional Building located at 501 West Markham Street or any portion of the building.” See Hyde Responses Question 8. He continued, that he nor “any person authorized to speak on [his] behalf, instructed any county election staff to exclude any members of the PCBEC from the Pulaski County Regional Building, or any part of the building, at any point.” *Id.* at Question 9. He stated that, after the County Attorney became aware of the election day incident between Commissioner Gomez and Assistant Director Camp, the County Attorney spoke with Director Poe and “reiterated that Election Commissioners are county officers permitted into the Elections Department offices and that, while County Judge has authority to hire/fire county employees not assigned to another elected official of the county, the supervision of the Election Department personnel in the performance of election-related duties is exclusively in the purview of the Election Commission.” *Id.*

Consequently, the evidence and statements show that “Election Department staff den[ied] hundreds of people, including election officials,

access to the staff offices.” Camp Responses Question 27. The statements of Commissioners Stahr and Gomez illustrate that at points closer to the election, they were denied access to the Offices, conference rooms, and other rooms used by election department staff in preparation for the election. Thus, the evidence supports the allegation that Election Department staff, in their independent reliance on the County Judge’s Order, denied election commissioners access to parts of the building that contained or possessed election related materials. The County Judge claims that his directives and orders did not exclude Election Commissioners, but it is clear that Director Poe utilized the Covid Orders as a reason to exclude Election Commissioners and instructed Election Department staff to deny access to staff offices, including work areas and the tabulation room. Camps responses further indicate that access to any area of the building was reliant upon permission of staff and staff’s presence. With Director Poe’s application of the Covid Orders and directives to Staff to not allow Election Commissioners into the Offices, the investigation has developed evidence supporting this allegation.

**D. Precinct 63.04 Ballot Assignment and Deletion (SBEC 2020-039 III.A.1., and III.A.2.) (Staff discovered that Election Staff inadvertently deleted a necessary ballot style for precinct 63. It was discovered pre-election and resolved by Election Staff prior to election day.)**

While investigating issues associated with Precinct 63, Staff learned that, in the lead up to the election, a balloting error was detected and ultimately corrected. From discovery of this issue, Staff investigated the circumstances of the balloting error, remedy, and procedures.

**1. *Ballot Style incorrectly deleted (SBEC 2020-039 III.A.1)***

Initially, Staff understood this allegation as relating to the street file error investigated in SBEC 2020-029. However, upon further examination, Staff discovered that while Election Department Staff were preparing ballot styles, they inadvertently deleted a necessary ballot style, but because of the time of discovery of the error, it was too late to re-do the ballot style assignments. Staff discovered that precinct part

63.4's ballot style had been deleted instead of another ballot style for that precinct part. The issue came to light when a voter noted that there were two election night results tapes posted at the polling location serving precinct 63, when there had not been two tapes posted there in previous years. Commissioner Stahr inquired about the issue and learned that there had been a ballot assignment error that had been corrected by Election Department Staff prior to early voting.

Amanda Dickens, Election Department Staff member, testified regarding the process of creating ballot styles, discovery of the error prior to early voting, and the solution implemented for the problem. Ms. Dickens stated that an observant voter noted that the ballot style assigned to him did not have the correct races on it and he called the Election Department offices. See Dickens Dep. at 33. The message was forwarded to her, and she began investigating what the voter was talking about. *Id.* She stated that she discovered, she "had mistakenly deleted the wrong precinct split from [her] attribute chart." *Id.* See excerpt of Dickens Dep. Exhibit 6 below:

63	LR 5	1 PCSD 1	32	33 6.2	63.1
63	LR 5	1 PCSD 1	✓ 32	33 6.2	63.1
63	LR 6	7 LRSD D3 ✓	✓ 30	33 6.2	63.2
63		1 PCSD 1	✓ 31	33 6.2	63.3
63		1 PCSD 1	✓ 32	33 6.2	63.4
63	LR 5	1 PCSD 1	32	33 6.2	63.4
63		7 PCSD 1	✓ 30	33 6.2	64.5
64	LR 5	1 PCSD 7	✓ 31	✓ 32 6.2	64.5

When in system, however, mistakenly deleted this line instead.

Should have deleted the line with the strikethrough

Ex. 6

Figure 19.

By deleting the wrong one, it allowed the incorrect precinct split ballot style to remain in the system and the incorrect one that contained an improper Little Rock Board Seat 5 race was prepared for this portion of precinct 63 that is outside the city limits. See Dickens Dep. 36. She stated that during the pre-election review, she recognized that the LR5 race did not belong in this particular precinct split, and thus crossed it out on her attribution table as shown above. *Id.* at 37. However, when it came time to delete the improper ballot style from the electronic system, she mistakenly deleted the one above, which was the correct ballot style for that split. *Id.* Because she believed she had corrected the improper split by deleting it, she went forward with preparation of the ballot styles.

It wasn't until a voter raised the issue on September 18, 2020 that she discovered the deleting error. See *Id.* 38-39.

She states she prepared a memo to Director Poe describing the error and the proposed remedy, which was to utilize another ballot style that contained all the correct races for precinct 63.04. *Id.* at 39. The memo, attached to her deposition as Exhibit 5, described the error, the issue it caused, and the proposed remedy. The memo notes that, because they had already printed and delivered ballots to the County Clerk, it was too late to correct, and thus they decided to use ballot style 210 from precinct 73, which had all the correct issues, as a replacement for the affected voters in precinct 63.4. The memo is excerpted below:

Therefore, a ballot for those voters was not created. After speaking with Jerry Amick at ES&S, it was determined that since we had already printed and delivered absentee ballots to the county clerk's office, that we could just assign another precinct's ballot style to those voters. Ballot style 210 has the exact same races on the ballot that these voters are eligible to vote on. This ballot is for voters in precinct 73. We will have to send an additional DS200 and ExpressVote to precinct 63 with ballot style 210 programmed to them. The clerk's office is changing the ballot style for voters in precinct split 63.4 to ballot style 210 so that all absentee voters will get the correct style. This change will also ensure that voters will get the correct ballot style during early voting and on election day when looked up in the electronic pollbook. There are currently 46 absentee voters affected by this. The clerk's office is working to get them the correct ballot style.

On election night, ballot 210 will tabulate into precinct 73 instead of precinct 63. Votes will not be affected at all; it will however affect which precinct the results are reported to.

Figure 20.

It is unclear, however, what is meant by the statement, "[t]here are currently 46 absentee voters affected by this." The memo continues, "[t]he clerk's office is working to get them the correct ballot style." Staff notes that September 18, 2020 was the deadline for the Clerk's office to begin mailing UOCAVA ballots out. Ms. Dickens stated that, the Clerk's office "had processed those ballots and had them ready to be mailed out, but they were able to pull those ballots before they actually sent them out in the mail and were able to replace them with ballot style 210." Dickens Dep. 41. Thus, Ms. Dickens stated that no voter got the wrong ballot for this issue. *Id.*

Because of the need to utilize ballot style 210 from Precinct 73, Election Department staff deployed a second tabulator and ballot

marking device to the polling location serving Precinct 63 to account for this error. *Id.* at 39-40. She also states, that because they had to assign Precinct 73 ballot style to voters in Precinct 63, that the reconciliation numbers will be higher for Precinct 73 than actual Precinct 73 voters and Precinct 63 will be lower than actual Precinct 63 voters. *Id.* at 44-45.

Consequently, the testimony reveals that a proper ballot style assigned to Precinct 63.4 was mistakenly deleted in the preparation for the election. That error was discovered on September 18, 2020 and another ballot style was identified as a replacement for the improperly deleted ballot style. That alternate ballot style, assigned to Precinct 73, had the correct races for Precinct 63.4, and thus was a proper style for voters in that precinct part. The evidence shows that no voter was given the incorrect ballot and all Precinct 63.4 voters were allowed to vote on all the correct races for this location. The evidence shows the error occurred, was timely identified, and proper corrective actions were taken to protect voters, and ensure affected voters received a ballot with all races and issues they were properly entitled to vote upon. Thus, there does not appear to be evidence of an election law violation related to the accidental deletion.

2. *Ballot Style Deletion correction not provided to Pulaski County Board of Election Commissioners. (SBEC 2020-039 III.A.2.)*

As part of the investigation into the allegations surrounding the issues associated with Precinct 63, Staff discovered that neither the street segment error discovered on November 4, 2020 and investigated by the SBEC in Docket number SBEC 2020-029, nor the ballot deletion error described above and the subsequent use of a ballot for Precinct 73 was provided to the PCBEC before certification of the election.

Ms. Dickens testified in her deposition that she understood that the PCBEC was not made aware of the ballot style assignment deletion error until the meeting on December 14, 2020. Dickens Dep at 45-46. Staff accessed the publicly available minutes for the PCBEC, and while reviewing the minutes for December 14, 2020, located the following excerpt:

Mr. Sorvillo requested the opportunity to review the tapes for precinct 63. Mr. Sorvillo stated that he was told that his ballot style was not available at that precinct when the polls opened. Mr. Fogleman suggested that the matter should not be discussed because it is in litigation. Commissioner Stahr requested clarification regarding a memo that pertained to this matter dated September 18, 2020. Mrs. Dickens read a copy of the memo for the record. The commissioners requested that a copy of the memo be provided to them. The commissioners also requested clarification as to the number of voters might have been affected. Mrs. Dickens said the number was 46, but the county clerk's office was able to correct beforehand because it was at the beginning of absentee ballots going out. No voters were affected during early voting or election day.

Figure 21.

Staff reviewed the publicly available minutes from the Pulaski County Elections web page, the minutes provided by both the Election Department and County Clerk's office and only located the above reference on December 14, 2020 regarding either issue associated with Precinct 63.

Consequently, the available records support the allegation that Election Department Staff did not advise the PCBEC about the street segment error discovered on November 4, 2020 (which is principally a Clerk matter) or the ballot assignment deletion error and enacted remedy until December 14, 2020. The testimony by Ms. Dickens is corroborated by the December 14, 2020 minutes, wherein she "read the [September 18, 2020] memo" from her to Director Poe to the Board during the meeting.

## **II. Election Day Issues**

Having completed the investigation of the allegations related to pre-election activities, this report now looks to the allegations related to Election Day. The following issues, alleged by the numerous complaints, relate to, or allegedly occurred on Election Day.

### **A. Denied Access to County Regional Building, Election Commission Office Suite. (SBEC 2020-039 II.B.1.; and SBEC 2020-043 I.B.)**

A continuing allegation regards the ability of the Public and PCBEC members to access areas of the Pulaski County Regional Building, including the Election Department offices, which include common areas, and the tabulation room.

1. *Assistant Director Shawn Camp bodily preventing Pulaski County Election Commission Chairwoman, Evelyn Gomez from entering the Pulaski County Election's Offices. (SBEC 2020-043 I.B. and SBEC 2020-051 IB.2.a.)*

As stated previously, Assistant Director Camp understood that the COVID order limited access to the Election Department office suite from the date of the Order through election night. In response to in response to Question 20, he stated that his “understanding on 11/3/2020 was that only Election Department staff were allowed into the staff office (Suite A) from the date of the County Judge’s order went into effect until election night, 11/3/2020, when election related activities that are required by Arkansas law to be open to the public were to begin and continuing through the official certification of the election results.” *Id.* at Question 20.

Regarding this specific allegation, Staff inquired of Mr. Camp, and asked whether “[a]t any point during the election process, did you physically block or attempt to prevent Commissioner Gomez from enter the PCEC offices?” Camp Response Question 49. The question continued, that if the incident did occur, for him to describe it. He provided that “[o]n [the] morning of Election Day, 11/3/2020, Evelyn Gomez, Pulaski County Election Commission Chair sought entry to the Election Commission offices (501 W. Markham, Suite A) which I was told was closed to everyone except Staff per Pulaski County Judge Barry Hyde’s COVID 19 Order and direction by the Director of Elections.” *Id.* He continued, “[b]ecause our office had been closed and sanitized the previous Friday, October 30<sup>th</sup>, due to an office worker testing positive for COVID 19, the staff had been hypervigilant regarding access to staff workspaces.” *Id.* He then stated, that according to his “understanding ... Commissioners, Poll Watchers and the media would be allowed in the Commission office beginning Election Night when election materials began arriving from polling locations to view the Election Night

Reporting process through the certification of the election on 11/13/2020.”  
*Id.*

He then began describing his interaction with Commissioner Gomez, in which he “answered the door to the Commission office and explained to Mrs. Gomez that she was not allowed to enter and reminded her that she had been told of County Judge Hyde’s Order by Director of Elections Bryan Poe on several occasions.” *Id.* He states that Ms. Gomez stated she was an election commissioner and was coming into the offices. *Id.* He then states, “[s]he forcibly opened the door and physically shoved me out of the way and entered the office.” *Id.* He states he “immediately yielded to avoid further conflict” and later filed a police report about the incident. *Id.*

When asked whether election materials were contained within the PCEC offices accessible by the doorway in which the above incident occurred, he replied, “To my knowledge there were no election materials in the **main part** of Suite A to which Mrs. Gomez sought entry.” *Id.* at 50 (emphasis added). He continued, “[s]ince it was in the morning of Election Day, **most election materials** were at Polling Locations.” *Id.* (emphasis added). He concludes, saying that “[o]there election materials were in locked areas for secure storage.” *Id.*

Staff included the emphasis in the above quotations because Staff understands that the DS450, used to tabulate ballots is located in a room accessible only from the Election Department Office suite southernmost common area. In response to Question 59, while inquiring of the allegation that Mr. Camp took ballots to his office, he responded, “[t]he only route to bring ballots to and from the secure storage room is through the Election Department office (Suite A).” *Id.* at Question 59. He continued, “the ballots were tabulated in the Election Department office (Suite A) would necessarily transit the office.” *Id.*



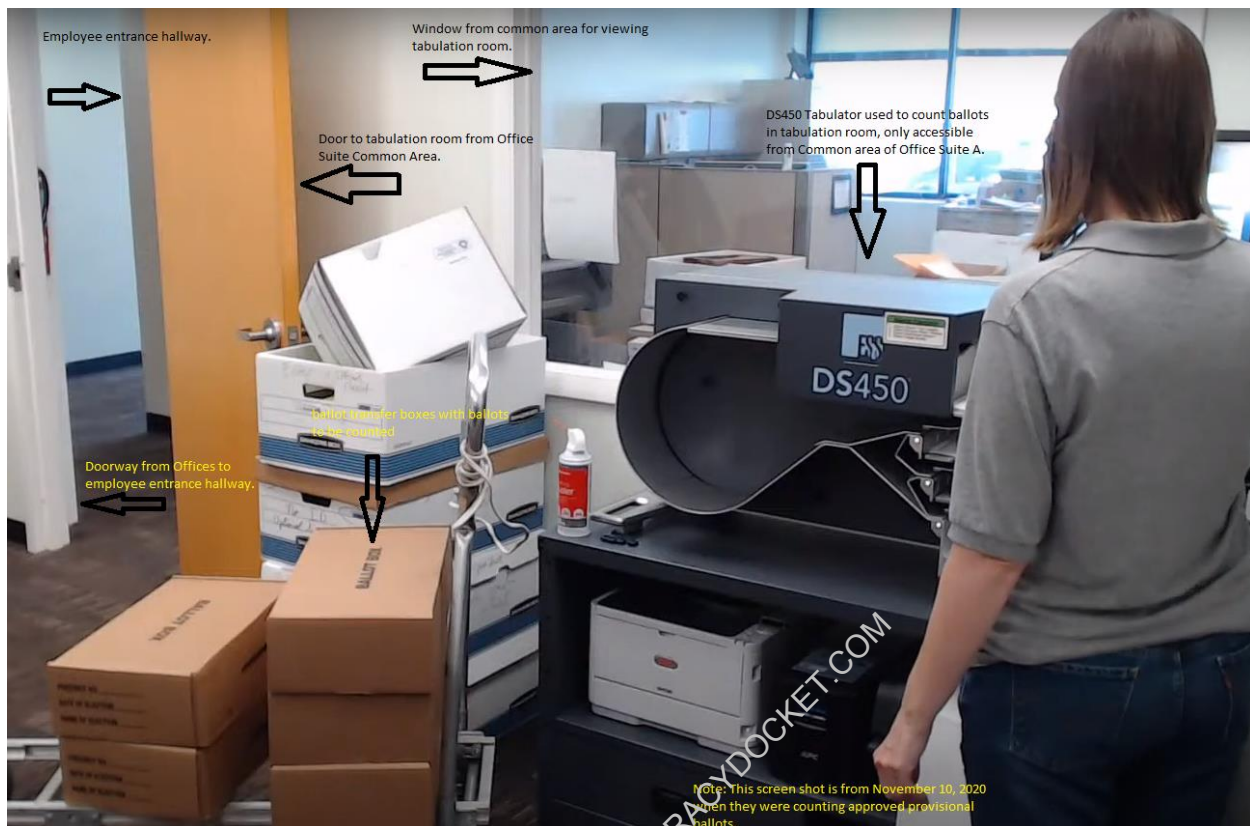


Figure 22.

Staff understands that the tabulator shown above was used to process approved absentee ballots starting at some time on the morning of November 3, 2020. Staff received a supplemental email from Mr. Camp, which included a link to observe election day tabulation, which was broadcast on Facebook for a Facebook account titled, “Pulaski Elect.” The link, “<https://www.facebook.com/pulaski.elect>” opens the Facebook page and has videos for November 3, 2020, where the DS450 is in use. See the below screenshot, taken from the Facebook Live video that began at 10:37 a.m. on November 3, 2020, showing the DS450 in the Tabulator room in operation counting ballots.

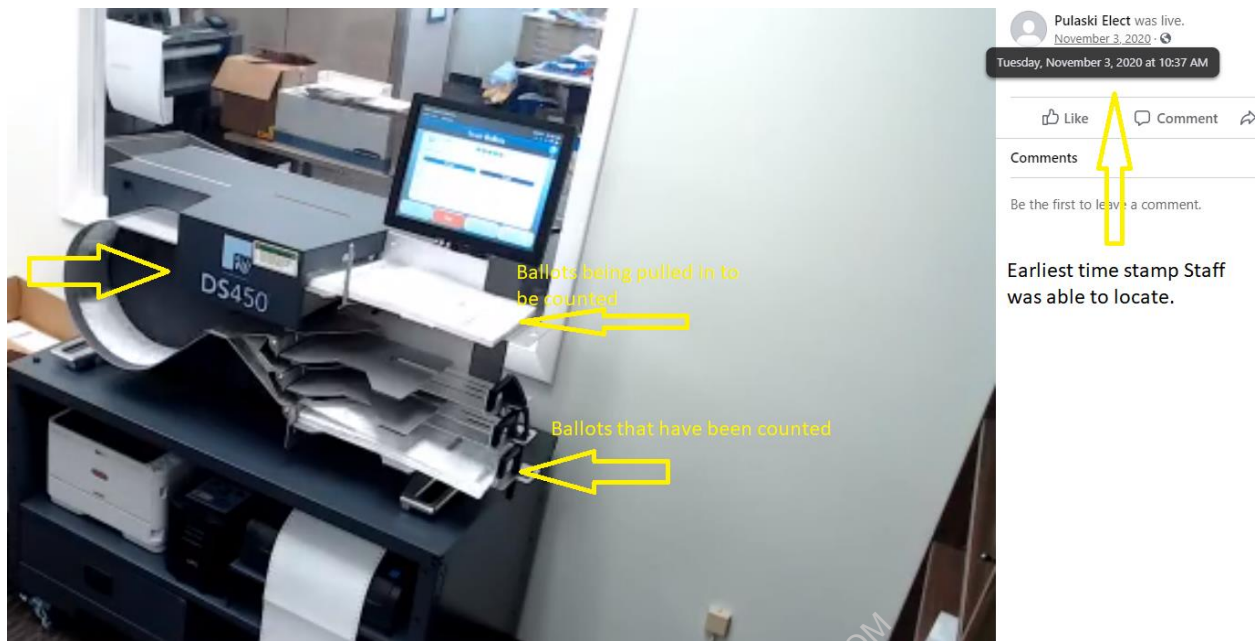


Figure 23.

Commissioner Gomez recounted the election morning incident in response to Question 10. She claims that she “attempted to enter the PCEC main office.” Gomez Response Question 10. She continues, “Camp stood with his body holding the door [and] would not allow me to enter.” *Id.* She claims he alleged that the office was closed to the public to which she replied that she was not the public but an election official. *Id.* She claims he then “pushed the door with his body... [and] she pushed open the door.” *Id.* She claims, “Camp then tried to put his body in front of me.” She continued, “[s]o that he couldn’t push himself on me or hurt me[,] I pushed my hand straight out to keep him away from me.” *Id.* She then stated, she “immediately got away from him as soon as [she] could [and] kept walking through the office.” *Id.* She concluded this response, indicating the Camp stated he was denying access because he “was doing what Poe told him to do.” *Id.*

Consequently, the statements indicate that Assistant Director Camp attempted to physically prevent Commission Gomez from entering the Election Commission Office on the morning of November 3, 2020, and that she did physically push him to gain entry to the offices. The evidence shows that Camp was doing this on reliance of the County Judge COVID Order and as directed by Director Poe. Staff is unsure what time this event occurred but understands that the tabulator room was used to

count previously approved absentee ballots. Staff also understands that the tabulator room is one of the secure storage areas used by Election Department staff when processing an election. Also, Staff understands that a portion of the tabulator room is used for election night reporting computer work.

2. *Tabulation Room Access within the Election Office Suite.*  
(SBEC 2020-039 II.B.2; and SBEC 2020-041 IV.B.;  
and SBEC 2020-051 I.B.1 and I.B.2.a.)

Staff, in reviewing the evidence recognized that absentee ballots were tabulated in the tabulation room on November 3, 2020, which is only accessible from the Election Department offices and common area. Absentee ballots were tabulated throughout Election Day, and yet, Camp's responses indicated that the Offices were closed to "Commissioners, Poll Watchers and the media" who would not be allowed into the offices until "Election Night when election materials began arriving from polling locations to view the Election Night Reporting process through the certification of the election on 11/13/2020." Camp Response Question 49.

Because of this apparent conflict, and because Staff had not located tabulation video on the Pulaski County Election Commission YouTube channel, or on the "Pulaski County Election Commission" verified Facebook Page, located at:

"<https://www.facebook.com/pulaskicountyelectioncommission>."

Staff made additional inquiry as to this apparent conflict in denial of access to all persons until election night, with the necessity to allow public access and viewing of tabulation of absentee ballots. Mr. Camp then provided, via email, the link to the Facebook page titled "Pulaski Elect." Staff noted that the "Pulaski Elect" page has only two posts before the November 10, 2020 10:37 video and subsequent tabulations of absentee ballots. One is dated June 2, 2020, and the second is dated, October 24, 2016. The live video on Pulaski Elect, however, does show people in the common area of the Office of Suite A. These people appear to be observers of some sort, but whether they are poll workers, election officials, poll watchers or the public is unclear. However, Staff did not

recognize the personnel as those regularly associated with Pulaski County Elections Department staff.

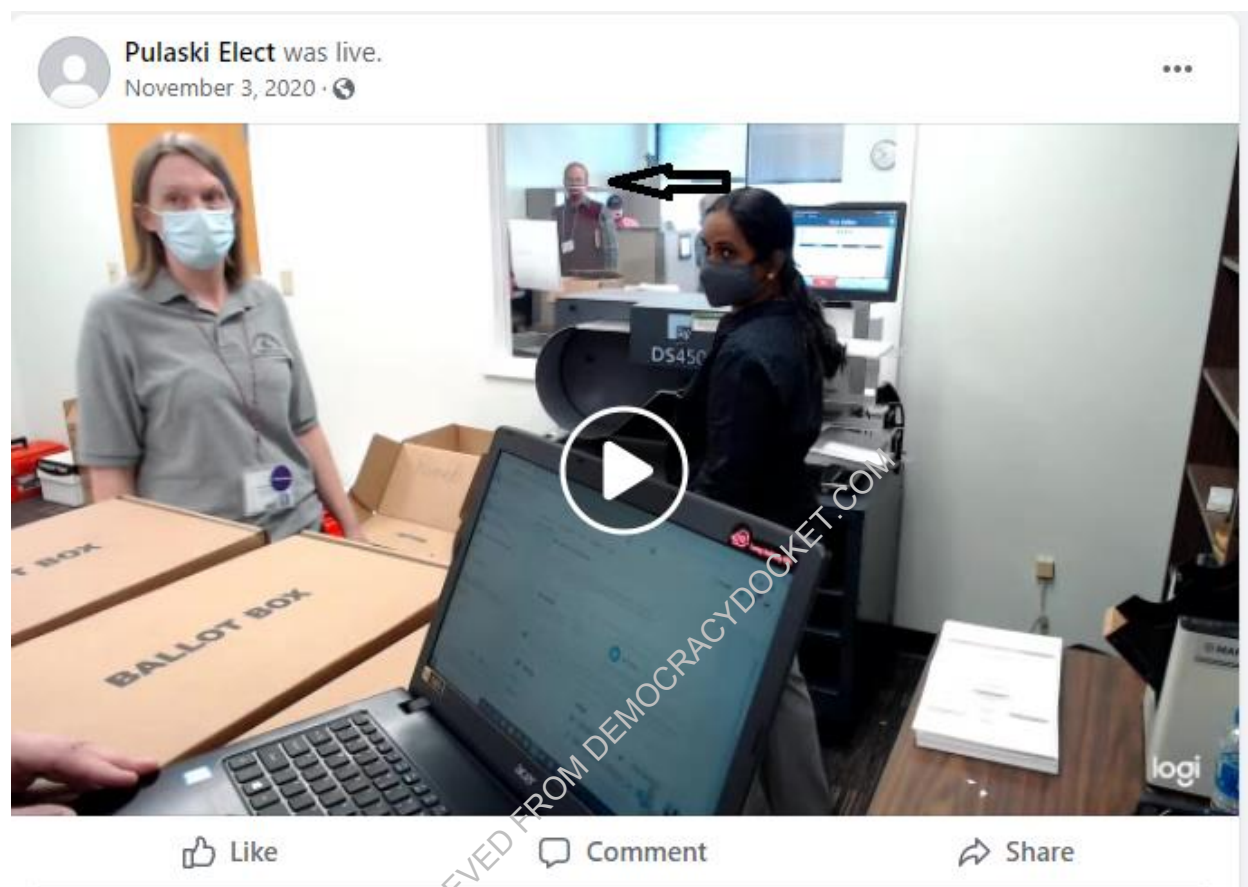


Figure 24.

Staff also notes that following the confrontation described above, the County Attorney provided guidance to Director Poe regarding accessibility to Election Department offices by PCBEC members. In Response to Question 9, County Judge Hyde reported that the County Attorney, after becoming aware of the incident between Camp and Gomez, “spoke with Director of Elections Bryan Poe and reiterated that Election Commissioners are county officers permitted into the Elections Department offices....” Hyde Responses Question 9. Thus, it appears that the initial response by Camp, that the public and commissioners were excluded from the Offices until election night was accurate as of that morning, but after the confrontation between himself and Gomez, the County Attorney directed otherwise.

Consequently, the evidence suggests that observers were permitted into the Election Department's Offices to observe through the viewing window the processing of absentee ballots. It appears that the Election Department staff utilized an alternate Facebook Page to broadcast on Facebook Live the tabulation of absentee ballots on November 3, 2020. Thus, the evidence tends to show that the office was open to observers, at least as of 10:37 a.m. on November 3, 2020. While the use of "Pulaski Elect" Facebook Page, versus the more used, and when google searched found Pulaski County Election Commission Facebook page appears potentially problematic. The fact that observers can be seen in the background shows that live observation was permitted. The Pulaski County Election Commission Facebook page is the page where meeting announcements are made, and the page that is found when conducting a google type search for their Facebook account. Thus, there does not appear to be evidence that tabulation of absentee ballots on Election Day was done in such a manner as the public was not able to observe the process.

**B. *Election Night Reporting was not performed.* (SBEC 2020-041 III.)**

SBEC staff requested required reporting information from the Secretary of State's office during the immediate post-election processing. Staff was unable to gain that information from the SOS, as it had not received the information from Pulaski County Election Officials.

Staff, in preparation of this report, contacted officials with the SOS to inquire as to whether they subsequently received this information from Pulaski County. SOS provided a spreadsheet that they utilize to track reporting of this information. As of May 12, 2021, the SOS did not have information in their tracking spread sheet. However, SOS Staff did say, it is possible it was reported later via email or word of mouth and simply not reflected on the tracking sheet.

Consequently, the evidence available at this point demonstrates that Pulaski County Election Officials failed to report outstanding ballots, provisional ballots, and UOCAVA ballots during their processing of ballots in the post-election period. See Spreadsheet excerpted below which was provided by the Secretary of State's Office.



Pulaski	
Randolph	55 PRV / 2 UOCAVA
Saline	64 PROV / 29 UOCAVA
Scott	20 PROV/ 1 UOCAVA
Searcy	6 PROV/ 1 UOCAVA
Sebastian	15 UOCAVA

Figure 25.

**C. Poll Workers at Precinct 63 and their interaction with voters. Voters subject to the street segment change alleged above were not allowed to vote a provisional ballot or update their voter registration rather than being sent to an alternative polling location. (SBEC 2020-046 I.A.2.)**

As part of the allegations regarding this election, it was alleged that poll workers located at the polling location serving Precinct 63 voters (the precinct affected by the street change investigated in SBEC 2020-029) did not allow voters the opportunity to vote a provisional ballot rather than sending the voters to another polling location.

Staff requested whether Camp “had any Change in Polling Location Forms” for voters sent from Precinct 63 to Precinct 7. Camp Responses Question 7, provided, “No.” Staff did receive in response to its follow-up FOIA request, a Problem Resolution Form for Mr. Jeffrey Butler, who was identified as a voter who presented at Precinct 63 polling location but was registered with Precinct 56.01. Staff notes that Mr. Butler was not one of the potential voters impacted by the Street Segment change investigated in SBEC 2020-029. Staff discovered Problem Resolution Forms for Mr. and Mrs. Dustin and Theresa Wheeler which were attached to the Complaint filed by Mr. and Mrs. Wheeler as part of SBEC 2020-029. Staff was not provided, nor was it able to locate, other Problem Resolution Forms regarding Precinct 63 and this issue.

Staff requested the identities of poll workers at polling locations serving Precinct 63 (other than vote center locations). From that list, Staff identified several poll workers who were deposed in the Claims

Commission Case. Of the identified poll workers, Poll Judge Mr. Charles Bradford's deposition provided the most insightful information related to this allegation.

Mr. Bradford testified that Election Day went smoothly other than a couple of incidents with voters, "because they had changed the precinct locations." Bradford Dep at 10. He continued that the voters were "upset because they had to go from where we were all the way over to the north side to cast their vote." *Id.* Mr. Bradford recounted an experience with one voter who was very upset at being sent to North Little Rock to vote, and Mr. Bradford failed to advise the voter that he could also go to a vote center location. *Id.* Mr. Bradford recounted that approximately eight or nine voters were sent to North Little Rock. *Id.* at 10-11. He continued that he recalled some discussion among the voters, who were neighbors, questioning why some could vote there, yet other neighbors were being sent to North Little Rock. *Id.* at 12.

Mr. Bradford then explained the process when a voter presents who is not on the poll book for that location. He states that when these voters presented, the check-in clerk was unable to locate the voter's name in the poll book, with the registered voters for that precinct. *Id.* at 14. He stated they then did a wider search, and "did find them and the poll locations, we have – they have a list of poll locations." *Id.* He stated, when they found the voters, they then called the "clerk's office and the clerk will give us their correct voting location." *Id.* He stated they notate the correct, according to the Clerk's office, voting location on the Problem Resolution Form, and direct the voter to the identified polling location. *Id.* Mr. Bradford stated he did not experience any problems contacting the Clerk's office when dealing with these issues. *Id.* at 15.

When Mr. Bradford was directly asked whether these voters were offered a provisional ballot, he stated, "Yes, sir." *Id.* at 16. He stated further that "they could have voted provisionally." *Id.* He indicated that he recalled one voter voting provisionally. *Id.* He stated that it did seem unusual to have voters who were a block away from each other having to vote in different locations such as that location in West Pulaski County and the other location being in North Little Rock. *Id.* at 17. Mr. Bradford indicated that, to the best of his recollection, the voters who were sent to North Little Rock would each have a Problem Resolution Form. *Id.* at 18-

19. He did state that the Problem Resolution Form is the voter's "ticket to the front of the line" at the new voting location. *Id.* at 18.

Consequently, the records and testimony indicate that the Polling Location Election Judge handled the voters impacted by the Street Segment Change. The testimony shows that he found it odd that neighbors were being sent from his location to North Little Rock, but that when he called the Clerk's office the North Little Rock location was confirmed as the assigned polling location for these voters.

Staff's understanding of the effect a street segment change has on the poll book is that a poll worker would not see the street segment assignment change and would only see the assigned precinct reflected in the voter registration record. Similarly, the deputy clerk taking the problem call from the polling location would not see the street segment change, and would only see the precinct assignment and know that Precinct 7 is the assigned polling location and ballot style, and both are located in North Little Rock.

Further, it appears that Mr. Bradford offered provisional ballots to at least some of the effected voters, but it appears the voters decided to not vote a provisional ballot. Similarly, it appears, at least from the three Problem Resolution Forms Staff could locate, that when a voter appeared and was not in the Poll Book, Mr. Bradford contacted the County Clerk for the voter's proper polling location assignment. Thus, there is no evidence that voters were improperly processed at the polling location regarding this issue.

### **III. Post-Election Issues**

#### **A. Allegations implicating Ballot Security**

While reviewing the allegations, Staff realized that many of the allegations centered around or invoked issues associated with Ballot Security, or more properly described as internal ballot handling and tracking. There is no evidence that ballots were outside of either the Regional Building or the Clerk's office during election processing, except when being transported to and from these two locations. Staff recognized



that early voting and election day in-person voting processes appeared to be handled smoothly with little or few issues. Absentee ballot canvassing that began on October 19, 2020 through Election Day, appeared relatively smooth and coordinated. There were no allegations or evidence discovered that showed Election Day tabulation of in-person early voting and election day voting faced any significant issues or problems. The evidence and record demonstrate that generally, the tabulation of canvassed and approved absentee ballots went smoothly on Election Day. There is, however, as described below, evidence of mislabeling, combining categories of ballots, and other circumstances that created confusion and made it difficult for observers to follow and track the processing of ballots post-election.

1. *General Description of the processing and movement of ballots within the County Regional Building, before, during, and after the election.*

Staff will describe the process and flow of absentee ballots from the Clerk's office to the Regional Building where absentee clerks would canvass and process them. Initially the received absentee ballots would be transported from the Clerk's office in a wheeled, secured, ballot box. See Poe Dep Part 1 at 35. This box was transported by election officials and armed security and sheriff deputies. *Id.* When received before canvassing began on October 19, the seal on the transport box was recorded and broken. *Id.* The ballot packets, with the absentee ballot application taped to the outside of each absentee ballot packet, were then placed in banker boxes. *Id.* at 35-36. These banker boxes were sealed, and the seal number recorded. *Id.* at 36. These banker boxes were stored in the secure storage area located centrally in the Regional Building. *Id.* Only Mr. Poe and Mr. Camp had keys to the secure storage area.

Staff notes that the secure storage area was the locker room and shower room for the workout facilities located in the Regional building. This room was rekeyed so that only Mr. Poe and Mr. Camp had the keys. See Camp Responses Question 43; and Staff photos from onsite inspection depicting the locker room and shower room used for storage excerpted below.



Figure 26. (Showing deadbolt locked door to Gym Locker room, which was used for Absentee ballot storage.)

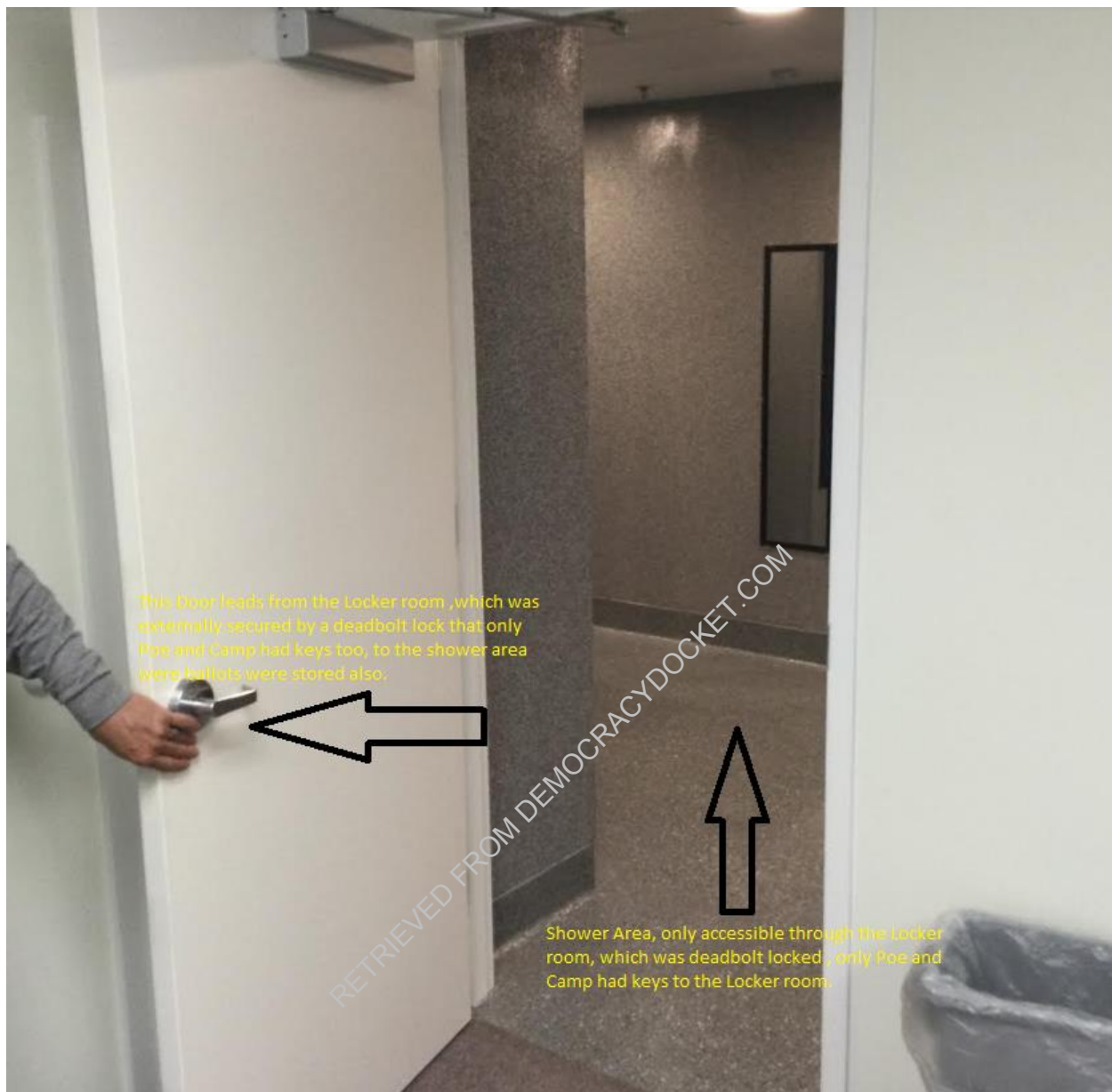


Figure 27. Taken from inside locker room, looking into shower area. This area is only accessible through door depicted in photo above.



Figure 28. This area was only accessible through the locker room, which was deadbolt locked and only Poe and Camp had keys.

Absentee ballots received after October 19, 2020, they were brought directly to the ballot canvassing area where the seals would be broken and the ballots “separated out into batches of 50 by absentee election officials.” Poe Dep. 36. He continued, describing that once the absentee ballots were put into stacks of 50, they would put a blank absentee list of voters on the stack and each stack or batch of 50 would be delivered to a pair of absentee ballot clerks for canvassing. *Id.* at 36-37. The pair of clerks then, “followed the statutory process in processing the absentee ballots....” *Id.* at 37.

Mr. Poe went on to describe that the processing changed at the “insistence of the Commissioners Gomez and Stahr, if the materials were not located, then the inner absentee ballot envelope was not – or the –

was not opened.” *Id.* He continued, “statue mandates that the absentee envelopes be opened in order to locate any missing materials.” *Id.* It was later clarified that previous practice had been for absentee clerks, when canvassing absentee ballots before election day, to open the other envelope, and if the voter statement and/or identification were not located in the outer envelope, the canvassing clerks would then open the inner ballot only envelope, to look for the missing materials. *Id.* at 37-38.

Because of this “change” in procedure, absentee ballots that were canvassed and did not have either the voter statement or identification in the outer envelope then “a star was put on those and those were set aside” by the canvassing clerks. *Id.* at 38. The “star” was placed in the irregular absentee ballot “green sheet” and the “star” indicated this ballot was missing materials and the inner absentee envelope had not been opened. *Id.* at 39. The “green sheet” was completed by absentee clerks to indicate some “irregularity” with the absentee ballot packet. *Id.* at 40. Irregular absentees could be for any number of statutory reasons and are initially determined by the initial set of absentee canvassing clerks. *Id.* at 41-42.

Mr. Poe explained that irregular absentee ballots were then reviewed by a second set of more experienced and more detail focused absentee clerks. *Id.* at 42. Mr. Camp, who was delegated supervision of this process, explained it as “[e]xperienced absentee canvassers provided a secondary review of absentee ballots that were initially disqualified by less experienced canvassers.” Camp Responses Question 42; see also Response Question 61 (“I, Shawn Camp, Assistant Director of Elections, supervised the canvassing of absentee ballots.”).

Mr. Camp continued, that “No member of the Election Department staff was involved in the secondary review of the already canvassed absentee ballot ‘packets’ other than to answer questions asked by canvassers and to move materials.” *Id.* He stated that in most cases the secondary review confirmed the initial canvassers determination. *Id.* He continued, stating that these second review canvassers would separate the irregular absentees into like categories and box like categories together. *Id.* He stated these like category boxes, when they became full, would be boxed with a lid and the “category was written on the top and

side of the box by the Election Judge or by me and I took the box to the secure storage room for interim storage.” *Id.*

Staff was present at the Regional Building on the first day of early voting and noted the canvassing of absentee ballots. Staff observed the above-described process in action during early voting and early initial absentee ballot canvassing.

However, the description of Election Day canvassing of irregular ballots, and eventual processing of provisional ballots was not as clearly laid out. Staff understands that Banker boxes were used to store and sort types of ballots. As described-above, bankers’ boxes were used to store similarly categorized irregular absentee ballots. Staff, during its onsite inspection noted many bankers’ boxes with descriptions of the contents written on the sides and in some cases the lid. Please note, however, it was expressed to Staff during the onsite visit, that some of these box categories were for post-election storage purposes and not reflective of in-processing labeling used during the election. Although it was understood the same technique of writing on the boxes was used during processing of election materials. The use of banker’s boxes for sorting categories of ballots was observed by Staff during its review of available YouTube recordings.





visional ballot review

Figure 29. Screen shot of PCBEC meeting Nov. 9, 2020 at time stamp 1:47:03.

Staff also understands that ballot transport boxes, which can be sealed by a numbered zip-tie type of device, were used to transport raw ballots to and from the tabulator room. See image below:

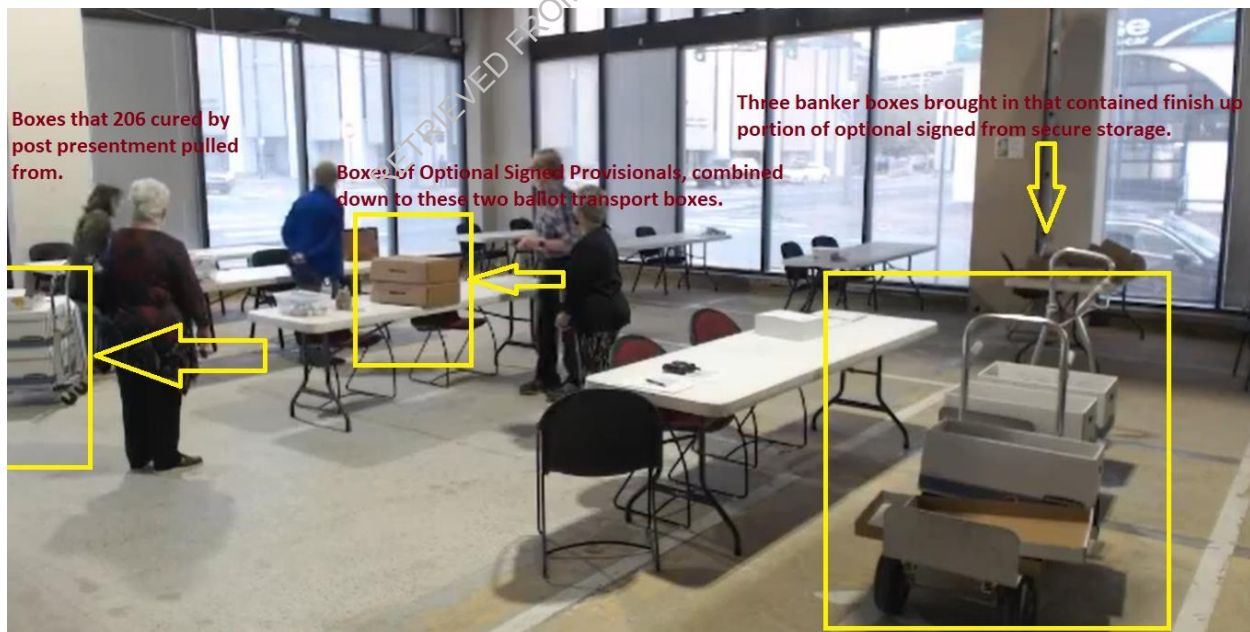


Figure 30. The Left most yellow box shows two banker boxes on a cart, as well as the yellow box to the far right, shows three opened banker boxes on two separate carts. The Middle yellow box shows two brown

Ballot Transport boxes. This image comes from a screen grab from tabulation of provisional ballots on November 10, 2020 in the Southern most portion of the Regional Building. Outside the windows are Broadway and West 2<sup>nd</sup> Street.

Staff, during its onsite inspection and subsequent interviews, inquired about the processing of provisional ballots. Staff understands that provisional ballots are gathered election night and placed into bankers' boxes from all the different precincts, early voting, and election day voting. The staff generate a list of provisional ballots and the box of provisional ballots are transferred to officials with the Clerk's office for their review to determine if the provisional voter is lawfully registered and voted the correct ballot style. See Staff Memo May 10, 2021 – Interview with Election Department Staff.

Staff received several versions of excel spreadsheets that are titled, "11032020 Provisional Ballots – Master 2.1" and other versions with the same file name, but suffix of "Master 1.1" and "Master 3.1." Staff's review of these files believe they represent the spreadsheet used to track and process provisional ballots. The below excerpt is from the Master 2.1 Page 1. The file shows the voter's ID number, early vote 1, the voter's information, and the reason from the Provisional ballot envelope, and then a column for the Clerk's explanation.

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
	ID	Prec Vote	First Name	Last Name	DOB	Current Address	City	State	Zip	Auth.	Reason if not	Prov. Ballot Envelope	Clerk's Explanation	Notice Mailed
1	1721581	EV1	MITCHELL	COMEACX	40/1/1985	111 E. 4TH ST APT 1208	N. LITTLE ROCK	AR	72114	No	OR	NAME MISSING	Removable	
2	Y	EV1	KHALIL	TROTTER	7/25/2000	1408 SWEET GUM LN	N. LITTLE ROCK	AR	72117	No	NR	NAME MISSING	Not Registered	
3				WILLIS-										
4	1717538	EV1	REBECCA	WILLIAMS	9/10/1985	2312 CRESTWOOD RD	N. LITTLE ROCK	AR	72116	Yes		ABSENTEE	Ballot Not Return	
5	1332871	EV1	LAURA	BORG	5/30/1973	3724 HILL ROAD	LITTLE ROCK	AR	72205	Yes		ABSENTEE	Cancelled Absentee	
6	1545763	EV1	EARVIN	INGRAM	2/24/1955	5525 WESTVIEW DR	N. LITTLE ROCK	AR	72116	Yes		ABSENTEE	Ballot Not Return	
7	1705925	EV1	TERETHA	INGRAM	6/22/1957	5525 WESTVIEW DR	N. LITTLE ROCK	AR	72116	Yes			Ballot Not Return	
8	1506512	EV1	LARRY	HUNTER	11/6/1956	209 E. 21ST ST.	N. LITTLE ROCK	AR	72116	No		ADDRESS CHANGE	Removable	
9		EV1	DARRYL	PORTER	12/9/1965	1608 CHANDLER ST	N. LITTLE ROCK	AR	72114	No		NAME MISSING	Not Registered	
10	4228698	EV1	LAUREN	ROBINSON	6/20/2001	13 CHEMIN CT				Yes		ABSENTEE	Ballot Not Return	

Figure 31.

Staff spoke with Ms. Amanda Dickens during the onsite inspection and learned that she assisted in preparation of the provisional ballot spreadsheets. However, she stated the Director Poe was principally responsible for its combination and final production. She stated that her practice was to go ballot by ballot in a box of provisional ballots and input the information from the provisional ballot envelope into the spreadsheet. She stated that the boxes contained a variety of categories of provisional ballots and that they were not sorted when she was conducting this data retrieval and entry process. She continued and



stated that she understood that the banker boxes of provisional ballots were transferred to the Pulaski County Clerk's office for their certification actions regarding the voter's registration status. See *Id.*

Based on this conversation with Ms. Dickens, Staff spoke with Mr. Jason Kennedy regarding the Clerk's office procedures and processes in handling their review of provisional ballots. He stated that they received the provisional ballots from the Election Department and processed the provisional ballots. He stated their responsibility was to pull the information from the envelope and cross reference with the spreadsheet and verify the registration status of the provisional voter. He stated that the provisional ballots were grouped roughly by polling location. See Staff Memo May 11, 2021 – Telephone interview with Jason Kennedy.

Initially he stated that the ballots were placed back in the original boxes, but when Staff inquired further, stating that the statements made by PCBEC members on the YouTube video indicated that approximately nine boxes were sent to the Clerk's office and only four boxes were received back that contained optionally signed non-identification related provisional ballots. He corrected his statement to say that the Deputy Clerks may have condensed the materials from a larger number of boxes to a lesser number, because the ballots did not fill up the larger number of boxes. He did state that the ballots were maintained in the order from which the Clerk's office received them from the Election Department. See *Id.*

Staff asked specifically whether Clerk's Staff would also review a provisional ballot that was made provisional for lack of identification only. He stated that the Clerk's Staff would review such a provisional and make note of whether the optional verification signature was signed or not such that the ballot could be counted or not. He stated that Clerk's staff did not sort or otherwise bundle categories of provisional ballots when they were returned to the Election Department. See *Id.*

Staff's review of the available canvassing and processing videos shows that, at times, multiple categories of ballots were being processed simultaneously. See Figure 23 above. Bankers' boxes to the left were being examined to identify 200 plus provisional ballots that had been identified as needing counting, while the three open bankers' boxes in the

far right of the photograph represent optionally signed provisional ballots that were being separated to expose the raw ballot for placement in the ballot transfer box for eventual tabulation. Director Poe stated that the canvassing and processing of ballots was an ongoing process through the election cycle. See Poe Dep. Part 1 at 47. Mr. Kennedy confirmed this, stating that his recollection was that the Clerk's office received provisional ballots at approximately four different times post-election.

Mr. Poe also described utilizing absentee clerks in multiple roles. He described processing provisional ballots, the actual separation of ballots from provisional envelopes, as occurring at separate times because he needed the absentee clerks to also send out over 2,000 notices to provisional voters. See Poe Dep. Part 2 at 66-67.

Consequently, the evidence and statements indicate that the post-election processing of the large volume of irregular absentee ballots, coupled with large number of provisional ballots, combined with the necessity to task the same groups of workers to different purposes, sometimes at the same overlapping times, along with significant movement of ballots from storage, to processing, back to storage, and back to processing, created an environment of lots of ballots moving around over several days post-election. With this overview of the ballot processing in mind, the investigation can look more closely at the specific allegations of internal ballot handling and tracking.

2. *279 Good Absentee Ballots located among disqualified absentees – Ballots allegedly located that had not been opened and thus could not have been processed. (SBEC 2020-039 III.B.2.; and SBEC 2020-046 II.C.2.a.)*

Staff's investigation attempted to understand the multiple meetings, and events associated with the movement and processing of irregular absentees and provisional ballots after the election. The principal allegation authorized for investigation was whether absentee ballot clerks were canvassing absentee ballots without opening the outer envelope.

Staff observed the YouTube recording from Election Night and observed Commissioner Gomez, in the below screen shot, opening the inner ballot envelope as part of the canvassing of absentee ballots. Staff did not observe any absentee ballot packets that required opening the outer envelope. This screenshot is from time stamp 4:52:26 of the November 3, 2020 meeting video file that is listed as being 8:14:35 long.

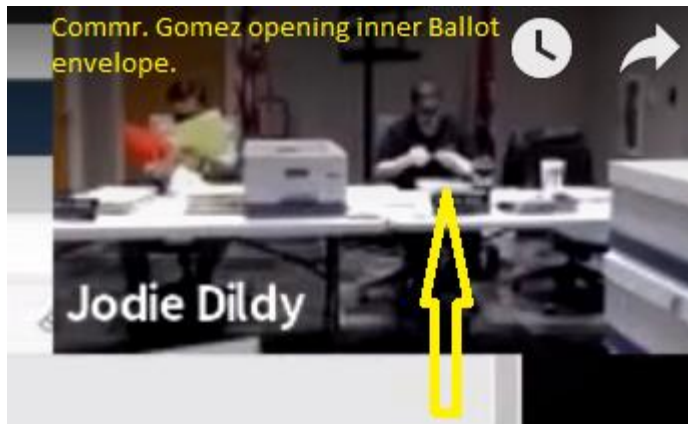


Figure 32.

Here is a broader view of the video playback from November 3, 2020.

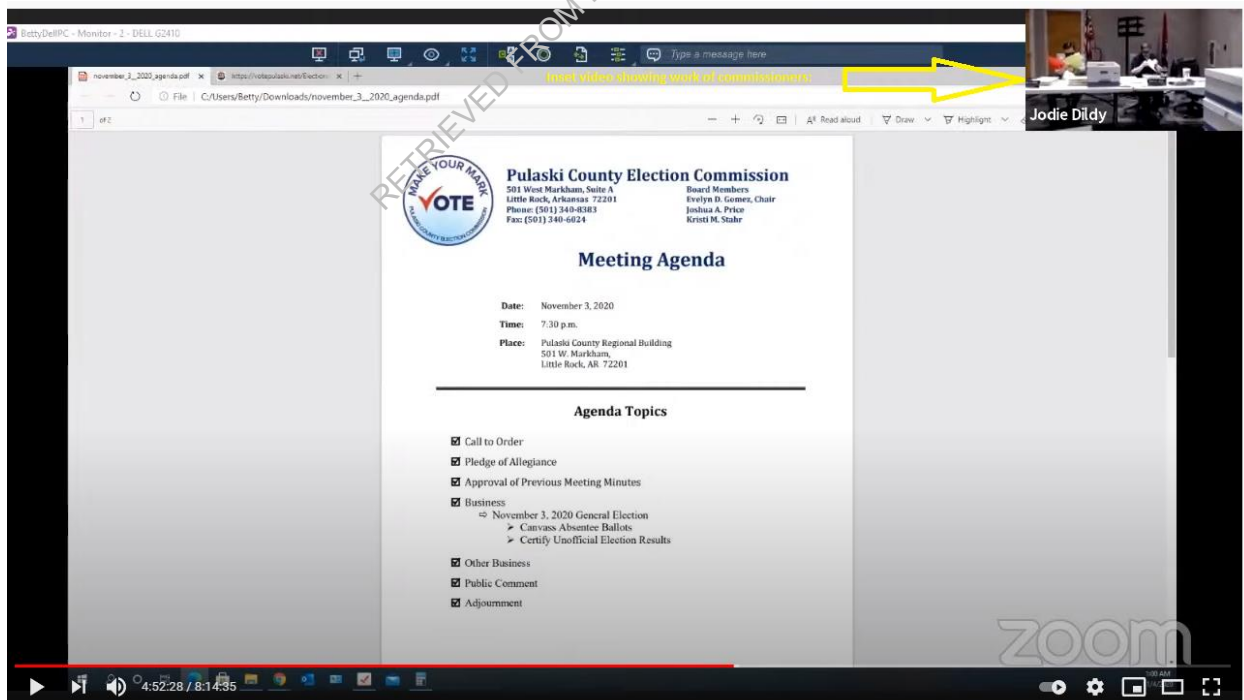


Figure 33.

Commissioner Gomez was asked, in question 15, if she as a commissioner located absentee ballots that had not been opened by absentee clerks. If yes, she was asked to describe the circumstances. She stated, “Yes because many ballots were not opened.” Gomez Responses Question 15. She continued, “[t]here were hundreds[,] absentee workers had not opened.”

Staff subsequently contacted Commissioner Gomez for clarification on this statement and learned that Commissioner Gomez was referring to the inner ballot envelope and not the outer absentee ballot packet envelope. Commissioner Gomez did not recall reviewing an absentee ballot packet wherein the outer envelope was unopened. Commissioner Gomez raised this issue because she understood the directions from the Commission to Election Department staff and ultimately to absentee clerks to process absentee ballots that were identified as missing materials in the outer envelope by opening the inner envelope beginning Election Day at 8:30 a.m. in the morning. Because these ballots were identified by the Commissioners on Election Night, their directive to process these types of ballots had not been fulfilled and caused additional processing time by the Commissioners. See Staff Memo May 11, 2021 – Telephone Interview – Commissioner Gomez.

Also, Commissioner Gomez described that she understood that Staff would be involved in the processing of absentee ballots, as had been done in previous elections. She stated she did not recall Election Department staff advising that they would not be reviewing irregular absentees as they had done in previous elections. See *Id.* When Camp was asked if the “Commission was made aware of this change,” he responded, “No.” Camp Dep at 39. He continued his answer but was cut off, when he said, “Let me rephrase my last answer.” *Id.* In Mr. Camp’s cross examination by Ms. Hoover, he was given an opportunity to explain his request for rephrasing his answer, to which he declined, stating, “I will just let it stand, because I don’t remember the exact thing I was answering.” *Id.* at 72.

As discussed previously, Pulaski County had, in prior elections, allowed the initial canvassers to open the inner ballot only envelope to look for required information to process absentee ballots. See Poe Dep Part 1 at 36-37, and 38. As described by Mr. Poe and Mr. Camp, at the

direction of Commissioners Gomez and Stahr, and their reliance on the Governor's proclamation stating that the inner ballot envelope was not to be opened until 8:30 a.m. on Election Day, the absentee canvassers did not open the inner ballot only envelopes. As described by Mr. Poe and Mr. Camp, these ballots were given a Green sheet and notated with a "Star." See Poe Dep Part 1 at 36. Camp stated in his deposition that the purpose for "starring" these absentee ballot packets was so that "they would be the first ones reviewed on November 3, after 8:30 a.m., once the ballot secrecy envelope could legally be opened." Camp Dep at 37.

Consequently, the evidence demonstrates that the initial canvassers who processed absentee ballot packets opened the outer envelopes that they processed. If materials were missing from the outer envelope, they did not open the inner envelope per the directives of the Commission. Further, it appears that some of these ballots were subsequently transmitted to the Commission for review on Election Night for additional screening where the inner ballot envelope had not been opened, even though the purpose of starring these types of ballots was to allow opening the inner envelope to continue processing them after 8:30 am on Election Day.

3. *Missing Ballots – Allegedly unable to account for and locate six (6). (initially the numbers unaccounted for were 132, but it appears that accounting reconciled all but six (6) ballots). (SBEC 2020-039 III.B.4 and SBEC 2020-041 I.A.; and SBEC 2020-046 II.C.2.c.)*

Continuing with the allegations related to internal handling and processing of ballots is the allegation that final reconciliation of totals and ballots indicate that Election Department Staff, and thus the Election Commission, was unable to locate account for 6 ballots. Commissioner Stahr testified that at the last count of ballots and their reconciliation with records, there were three ballots missing from remakes and three undercounted from provisional ballots. See Stahr Dep. Part 1 at 137-138.

She testified in the second portion of her deposition that she understood the count of ballots to totals to reflect a discrepancy of six ballots. See Stahr Dep. Part 2 at 89.

Staff contacted Mr. Camp with Pulaski County Election Department regarding this alleged discrepancy. He stated neither he, nor Ms. Dickens had any information regarding the allegations. He stated that Former Director Poe was the principal point of contact with the Commission. He stated he is unaware of the allegation.

Staff spoke to Commissioner Stahr to better understand her testimony and the alleged discrepancy of 6 unaccounted for ballots. See Staff Memo May 13, 2021 – Telephone Interview – Commissioner Stahr. Staff understands that there are two categories of ballots for which Commissioner Stahr believes there was a discrepancy in the tabulation and ballot accounting. *Id.* First is a subset of the improperly tabulated 327. Second is a discrepancy associated with Provisional ballots. *Id.*

Regarding the 327, Commissioner Stahr stated to Staff that when this issue was brought to light, 212 had been processed and tabulated, but that 115 were among other ballots to be remade. Staff recalls that the remake process was somewhat confusing as the initial estimates for remakes was 1200, but the actual number of remakes was 831 remade ballots. See Stahr Dep. Part 2 at 48. Thus, it stated that 115 of the improperly tabulated ballots would have to be remade. However, at the conclusion of the processing, there were allegedly only 112 ballots, from this batch of 327, that were remade. See Stahr Dep. Part 1 at 135. She stated that Amada Dickens reported that only 112 ballots were remade from the bad 327. According to Commissioner Stahr, she did not know if the 3-ballot difference between the 115 and 112 was a mistaken count, or mislaid ballots. *Id.* When discussing this issue with Staff, she was unsure if the original miscount of 327 was correct or if the improper ballots included in tabulation were 324.

The ballots cast as of November 6, 2020 12:04 pm were as follows:

Run Date:11/06/20 12:04 PM						
Pulaski County, Arkansas						
	TOTAL VOTES	%	Elec. Day	Early	Absentee	Provision
PRECINCTS COUNTED (OF 137).	137	100.00				
REGISTERED VOTERS - TOTAL	260,635					
BALLOTS CAST - TOTAL.	167,450		34,864	111,193	21,393	0
BALLOTS CAST - BLANK						

Figure 34.

The ballots cast as of November 10, 2020, 2:01 pm were as follows:

Run Date:11/10/20 02:01 PM						
Pulaski County, Arkansas						
	TOTAL VOTES	%	Elec. Day	Early	Absentee	Provision
PRECINCTS COUNTED (OF 137).	137	100.00				
REGISTERED VOTERS - TOTAL	260,635					
BALLOTS CAST - TOTAL.	168,513		34,864	111,193	22,456	0
BALLOTS CAST - BLANK						

Figure 35.

This showed an increase of 1,063 all ballots cast, which matches the increase in absentee's reported, from 21,393 to 22,456 which equals 1,063 ballot difference.

The ballots cast as of November 10, 2020, 5:46 pm were as follows:

Run Date:11/10/20 05:46 PM						
Pulaski County, Arkansas						
	TOTAL VOTES	%	Elec. Day	Early	Absentee	Provision
PRECINCTS COUNTED (OF 137).	137	100.00				
REGISTERED VOTERS - TOTAL	260,635					
BALLOTS CAST - TOTAL.	169,474		34,864	111,193	23,417	0
BALLOTS CAST - BLANK						

Figure 36.

This reflected an increase of 961 total ballots cast, which matches the increase in absentees from 22,456 to 23,417, which equals the 961-total increase. The ballots separated and tabulated on November 10, 2020 were provisional ballots, optionally signed id related and not absentees. Yet for the reporting, Election Department staff reported them as absentee ballots.

It is not until November 14, 2020, at 3:25 am that Provisional ballots are reported, see below:

Pulaski County, Arkansas						
Run Date:11/14/20 03:25 AM						
	TOTAL VOTES	%	Elec. Day	Early	Absentee	Provision
PRECINCTS COUNTED (OF 137).	137	100.00				
REGISTERED VOTERS - TOTAL	260,635					
BALLOTS CAST - TOTAL	170,852		34,864	111,193	23,559	1,236
BALLOTS CAST - BLANK						

Figure 37.

This report reflects an increase in total ballots cast by 1,378. This 1,378 is reflective of the increase in absentees from 23,417 to 23,559 (142 ballot increase) and the addition of 1,236 Provisional ballots.

The next report in this series is from November 16, 2020, at 6:20 pm which showed a minor increase in absentees, thus raising the total of ballot cast another 18 votes. This is reflected in the totals, as they increased from 170,852 to 170,870.

Pulaski County, Arkansas						
Run Date:11/16/20 06:20 PM						
	TOTAL VOTES	%	Elec. Day	Early	Absentee	Provision
PRECINCTS COUNTED (OF 137).	137	100.00				
REGISTERED VOTERS - TOTAL	260,635					
BALLOTS CAST - TOTAL	170,870		34,864	111,193	23,577	1,236
BALLOTS CAST - BLANK	9	.01	1	3	5	0

Figure 38.

Because of the reporting of combined categories of ballots, and reporting tabulated provisional ballots as absentee ballots, it is possible that the count of 327 was incorrect and it was actually 324 ballots that were improperly included. However, according to Mr. Poe's deposition, he states that of the 115 remakes from the 327 improper ballots, they only remade 112 because "three were missing." Poe Dep. Part 2 at 18-19. He went on to say he believed they were "empty envelopes." *Id.* Thus, if the remake was short three ballots, which should not have been tabulated, then the resultant improper ballots included in the results would be 324. This discrepancy in the stated 327, versus the tabulated and remade ballots of 324 explains the absence of 3 of the six ballots allegedly missing from the accounting.

Commissioner Stahr explained the additional three ballots that were unaccounted for was an increase in expected and located ballots. Staff Memo – May 13, 2021 – Stahr. She stated that when discussing ballot tabulation totals with Mr. Poe, based on her records and the number of ballots approved for tabulation, she expected to hear that they



had tabulated 1,421 ballots. However, she stated that Mr. Poe reported having tabulated only 1,246 ballots. It was later discovered that 46 of the ballots expected to be tabulated were listed twice and thus duplicates on their accounting spreadsheets.

Thus, the actual number expected to be tabulated was 1,365, but only the 1,246 had been. This created a difference of 129 ballots that were to be tabulated but had not been tabulated. The Commission then began searching for these 129 ballots but located 132 ballots that had been determined to be tabulated, were listed as having been tabulated according to the accounting spreadsheets, but the ballot envelope was still sealed. The difference between the expected finding of 129 ballots and the found 132 ballots accounted for the other three ballots that she did not believe was properly accounted for.

However, given the multitude of tabulations, and the fact that the discrepancy was, in part, based on the spreadsheet versus actual tabulation results helps to explain this potential issue. It appears, that these three ballots had been identified for tabulation previously and had been marked off as being tabulated. It appears that the marking off was in error, as the ballots were located unopened, and thus, not tabulated.

Understanding that numerous categories of ballots were being tabulated in simultaneous batches along with poor ballot handling practices, coupled with multiple-people handling multicategories of ballots and multiple-people utilizing multiple spreadsheets for tracking, creates an opportunity to mark a ballot as counted, when it was not actually pulled and processed through the tabulator.

Consequently, the evidence here shows additional internal ballot handling practices that led to confusion and miscommunication and improper record keeping on the accounting spreadsheets, but ultimately, it appears that the ballots were accounted for. The evidence shows that three ballots were not located from the 115 which was part of the improperly tabulated 327, thus it appears that only 324 ballots were improperly tabulated. As the improper ballots may have been disqualified because they did not contain a ballot, as was described when the remakes only totaled 112 versus the expected 115. Secondly, the other three ballots were found that were to be tabulated, and reported on the

accounting spreadsheet as counted, but in reality, were not counted until located by the Commission when they were searching for the mis-located 129. The evidence, while proving that the handling of ballots, tabulations and record keeping had some problems, shows that the tabulations balanced with the located and identified ballots.

4. *Box of ballots located in Tabulation room.* (SBEC 2020-039 III.B.5.; and SBEC 2020-041 IV.A.)

Commissioner Gomez described locating a box of ballots on the tabulation room floor during the early hours of November 14, 2020. After making remake ballots with Amanda Dickens, Commissioner Gomez entered the tabulation room and located “an open ballot box.” Gomez Dep. 165. She stated that she picked it up to look at it and located an envelope that was labeled, “For commission review.” *Id.* This envelope contained ballots, according to Commissioner Gomez. *Id.*

Commissioner Gomez stated that Mr. Jamie Clemmer was present when this opened box of ballots was in the tabulation room floor. Mr. Clemmer provided a written statement wherein he recounted the experience he observed on Friday, November 13, into the early hours of Saturday, November 14. His written statement provided:

We were gathered in the room with the DS450 tabulator, to await the final tally, so we could return to the main meeting room, where the final results would be certified and the meeting adjourned. It was then that Ms. Gomez discovered a ballot box, with an envelope under it, containing other ballots. This ballot box had been opened, the seal broken, with no documentation of who broke the seal or why the seal had been broken. When Ms. Gomez asked Mr. Poe what the box was that contained ballots and why they were unsealed, he stated that they contained ballots that were to be reconsidered by the commission. When she asked why the commission had not been told of this box, and the box was being just now discovered by them, his reply was that he just “had not gotten around to it.” (It was obvious to all that a seal had been affixed to the box and subsequently broken off.) When asked why the seal was broken, Mr. Poe stated that they were in a secure room, in a secure building. When asked who had key access to this room, Mr. Poe listed several staff persons with access. Ms. Gomez then asked for a list of those names.

Figure 39.

Mr. Clemmer was deposed as part of the litigation, and he again recounted his observations. He described being in the tabulation room after the Commissioners had spent the evening and early morning hours pulling ballots that were approved for counting but were located in boxes labeled as DO NOT COUNT. See Clemmer Dep. At 13-15. The Commissioners decided to search several boxes and see if any additional ballots, which had been voted to be counted, were in the DO NOT COUNT boxes. *Id.* After locating some approximately 180 ballots that were voted to be counted in the boxes of DO NOT COUNT, the ballots were tabulated, and data placed on the thumb drives for uploading to Election Night Reporting. *Id.* at 15. Some of the 180 located ballots would not scan and had to be remade. *Id.* at 17-18. Those were remade and re-tabulated to have presumably final numbers for uploading. *Id.* at 18. While waiting, he moved to the tabulation room where the DS450 is located. *Id.* at 19. At this point he observed an open and unsealed box of ballots sitting on the tabulation room floor. *Id.* He recounts the exchange and Commissioner Gomez's discovery of the ballot box with the broken seal. *Id.* Mr. Clemmer recounts that, after a few tense moments when Director Poe is blocking access to the ballot box, another Commissioner comes in and breaks the standoff. *Id.* at 22-23. At this point, the boxes are carried back to the meeting room so the commissioners can go through these boxes. *Id.* at 23. Mr. Clemmer recalls that he believed the Commission located an additional 18 ballots, but it could have been 15 ballots from these materials that were deserving of being counted. *Id.*

Mr. Clemmer recounted a conversation between Commissioner Gomez and Mr. Poe regarding the lack of seal tape on the ballot box located on the floor. He stated that Mr. Poe explained that the tabulation room is a secure room and only Election Department staff have keys to it. *Id.* at 25-26. Mr. Clemmer also recounted that when he first arrived on the evening of November 13, 2020, he believed he was summoned to assist in the operation of the DS450. *Id.* at 26. He stated that upon his arrival he entered the tabulation room to inspect the DS450 and noted that the doorway was opened. *Id.* He stated that an unknown person told him he was not allowed in the tabulation room and he left, but he stated, "I walked in that room." *Id.* at 27. He stated that when he left the room after initially walking in to observe the DS450, Commissioner Gomez closed the door behind him. *Id.* at 28.

As of this writing, Mr. Poe has not provided written answers to Staff's questions. However, Mr. Poe's deposition addresses this issue. He stated in the deposition that the opened box with ballots located on the tabulation room floor were "irregular absentee ballots set aside for the commission – set aside by the commission for further review." Poe Dep Part 2 at 35. He confirmed that the box was "open with no – with no tab on it and no seal on it." *Id.* When asked how long that box had been in the tabulation room, Mr. Poe responded, "November 4<sup>th</sup>." *Id.* at 35-36. Mr. Poe confirmed that those ballots were on the list for him to address with the Commissioners. *Id.* at 36. He continued, that the Commissioners reviewed those ballots and that several of them were ultimately counted. *Id.* at 36-37. He explained that some of the ballot applications had illegible images, and that they needed cleaner copies for review. *Id.* Mr. Poe did not recall any other ballots coming in to be processed between the report generated at 3:25 a.m. on November 14<sup>th</sup> and November 16<sup>th</sup>, it would have come from these discovered ballots on the morning of November 14<sup>th</sup>. *Id.* at 37-38.

Consequently, the testimony and evidence support the allegation that a box of absentee ballots was located on the tabulation room floor on the morning of November 14, 2020 that contained partially processed ballots that which included a number of ballots that were later qualified and counted. The evidence shows that this box was in the tabulation room floor since November 4, 2020. This room is located within the Election Department Office Suite and has a separate lock on it that many of the Election Department staff have a key too. This box was not sealed, and Mr. Clemmer testified that he was able to walk into the tabulation room on Friday, November 13, 2020 at around 6:30 or 7:00 p.m. as the door was standing open. There is no evidence adduced, however, that the box was tampered with or otherwise manipulated, other than being left in the tabulation room without being sealed.

5. *Poe attempting to deny access and inspection of the box by Chairwoman Gomez. (SBEC 2020-051 I.B.1.)*

Commissioner Gomez recounts her experience and claims that Mr. Poe was blocking her access to the discovered box of ballots on the tabulation room floor during the early hours of Saturday, November 14<sup>th</sup>. See Gomez Dep Part 1 at 165-167. Her testimony clearly states that Mr.

Poe placed the box behind him and would not move such that Commissioner Gomez could immediately get to the Box. *Id.* at 166-167. Upon the entry of another commissioner, Mr. Poe allegedly relented, and Commissioner Gomez gained access to the opened and discovered box of ballots. This account was witnessed by Mr. Jamie Clemmer and reflected in his written statement provided below:

Things then took a turn for the worse. Ms. Gomez tried to take the box and envelope to look at the ballots with the rest of the commission. Mr. Poe stepped in front of her, picked up the box and said he would "handle it." Ms. Gomez made the request again, and was told again by Mr. Poe that he would handle it. Mr. Poe took the box and placed it on the other side of the room and blocked it with his body. He refused to move and give Ms. Gomez access to the box. It was only after the rest of the commission members entered the room and some tense silent moments passed that that he did finally relinquish possession of the box that was rightfully the purview of the election commissioners. Following the inspection of the newly discovered box, more eligible ballots were found and counted (approximately 10+).

Figure 40.

Commissioner Stahr recounts the incident as the other Commissioner who witnessed this incident. She states that Mr. Poe was blocking Commissioner Gomez from leaving the tabulation room and tried to "take them [box] away from her." Stahr Dep Part 2 at 78-79.

Mr. Poe was not asked about the specifics of this interaction in his deposition but did confirm that the box of ballots was located in the tabulation room floor, and that box of ballots needed additional processing. He also confirmed that a number of those ballots were eventually counted and included in the final tally for the election.

Consequently, the evidence and testimony adduced by the investigation, as developed from the sworn testimony of Commissioner Gomez, Commissioner Stahr, and Mr. Jamie Clemmer confirms the allegation that Mr. Poe physically blocked, at least for a short period of time, Commissioner Gomez from accessing or removing a box of ballots from the tabulation room after its discovery during the early hours of Saturday, November 14, 2020. The evidence shows that this box contained live and ultimately valid ballots that were included in the election totals.

6. *Improperly Rejected Absentee Ballots.* (SBEC 2020-041 I.B.)

The premise of this allegation focused on a binary approach to absentee ballot review. Generally, absentee ballots are processed on Election Day and are directly supervised by the Election Commission. However, given the large number of absentee ballots processed by Pulaski County, their review process involved multiple levels of review before final resolution of irregular ballots. The system established by Pulaski County election officials had multiple opportunities for an identified irregular absentee to be reviewed and verified that the irregularity was a disqualifying event.

As discussed above, there are three large categories of irregular absentee ballots. There are irregular absentee ballots where the voter statement and identification are in the outer mailing envelope. The second category were absentee ballot packets that did not have the information in the outer mailing envelope but did have the materials in the inner ballot only envelope. The third category were ones that still had a deficiency even after opening the inner ballot only envelope.

The process was if the initial canvassers determined the absentee ballot was qualified and should be counted, that ballot went through paperwork separation process, and the sealed ballot only envelope was placed in a ballot box for processing after 8:30 a.m. on Election Day. Camp Dep at 27-28. That ballot packet would not receive secondary review if the initial canvassers agreed the ballot should be counted. *Id.*

If the initial absentee clerks noted an irregularity, it was marked with a “green sheet.” Irregular absentee ballots that had the information in the outer mailing envelope received a secondary review. Mr. Poe explained that irregular absentee ballots were then reviewed by a second set of more experienced, more detail focused absentee clerks. Poe Dep. Part 1 at 42. This secondary review often confirmed that an irregularity existed in the ballot packet material. Mr. Camp, who was delegated supervision of this process, explained it as “[e]xperienced absentee canvassers provided a secondary review of absentee ballots that were initially disqualified by less experienced canvassers.” Camp Responses Question 42.

Absentee ballots that were canvassed and did not have either the voter statement or identification in the outer envelope, the initial absentee clerk would then put a star on those to indicate that the missing material may be in the ballot only envelope and that the ballot needs further canvassing after 8:30 a.m. on Election Day. *Id.* at 38 - 39. Mr. Camp continued, that “No member of the Election Department staff was involved in the secondary review of the already canvassed absentee ballot ‘packets’ other than to answer questions asked by canvassers and to move materials.” *Id.* He continued, stating that these second review canvassers would separate the irregular absentees into like categories and box like categories together. *Id.* He stated these like category boxes, when they became full, would be boxed with a lid and the “category was written on the top and side of the box by the Election Judge or by me and I took the box to the secure storage room for interim storage.” *Id.*

On Election Day, the absentee clerks were to open the inner ballot only envelope and continue processing the starred irregular absentee ballot packets. However, as stated above, it appears there were large numbers of starred irregular ballot packets where the inner ballot only envelope was not opened until reaching the Commission. Of the ones where the inner ballot only envelope was opened and the canvassing of that ballot packet continued, the ballot would either become qualified to be counted, or some other deficiency noted so that the Commission could review it.

Where non-starred irregular absentees, that had all the necessary material in the mailing envelope received a second absentee clerk review before going to the Commission, starred irregular absentee ballot packets did not all get a secondary review before going to the Commission. See Camp Dep. at 43. Thus, an irregular absentee that had the information in the outer envelope, but was deficient for some reason, would be reviewed three times, initial canvass, second canvass by experienced clerks, and finally by Commission. Many of the starred irregular absentees, only received two levels of scrutiny, initial canvass, where missing materials identified and suspected to be in ballot only envelope, continuation of that initial canvass on Election Day when the ballot only envelope could be opened and then reviewed by the Commission.

Consequently, the canvassing of absentee ballots was a continuing and ongoing process that ultimately ended with either a determination of DO COUNT which could be made by an absentee clerk during processing, or a DO NOT COUNT decision by the Commission. Thus, an irregular absentee ballot could be converted by higher levels of review to a DO COUNT. The way Staff understands this process is to think of the canvassing as ongoing, with occasional pauses for review by higher levels of review, culminating with a Commission decision of DO COUNT or DO NOT COUNT. Based on this multi-layered and review based processing with ultimate authority resting with the Commission, the evidence does not support a finding that absentee ballots were improperly rejected, because the processing system created by Election Officials allowed initially rejected ballots to be reviewed by more senior officials culminating with the Commission.

7. *Camp and Dunlap (and Poe) allegedly processing remake ballots outside public view. (SBEC 2020-039 III.B.7.; and SBEC 2020-051 I.B.2.b.)*

This allegation stems from the remake process of ballots that would not scan and need to be duplicated to be tabulated with the tabulation machine. Camp Dep. at 14. Mr. Poe stated he had direct knowledge of the incident allegedly involving Mr. Camp and Ms. Dunlap. Poe Dep. Part 2 at 58. Mr. Poe explained his understanding of this allegation, in that Mr. Camp and Ms. Dunlap “brought in some ballot to be remade from the tabulation the previous day on Thursday, and then Ms. Dunlap brought in some ballots to be remade that we had identified whenever we were separating out both – I actually worked with her on this, separating out the materials from some absentee ballots that had been approved to be tabulated by the commission.” *Id.* Mr. Poe continued, “[a]t no point were they by themselves with the ballots.” *Id.* at 58-59. He stated that “they came out of the office, but you know, there are people in the office, all sworn election officials.” *Id.* at 59. When asked, “Did they open them up to the public?” he responded, “No.” *Id.* He concluded his testimony on this issue, answering the question, “so they just didn’t process them in



the same room that other ballots were being processed” to which he replied, “Yes.” *Id.*

Mr. Camp was asked about this incident, to which he replied that ballots were occasionally in his office, but only related to the election official processing that ballot who had a question about the ballot. See Camp Responses Questions 54-56.

Canvasser Catherine Dunlap stated that she “never took ballots into Assistant Director Camp’s office.” Dunlap Responses Question 3. Ms. Dunlap stated she was not operating at the direction of Assistant Director Camp, but “was working at the instruction of Director Bryan Poe while Assistant Director Camp was supervising the process of remaking damaged ballots in the other room.” *Id.* at Question 6. When asked if Mr. Camp’s office was open to the public, she responded, “I was told that due to COVID regulation, the Election Commission administrative offices were open only to staff and absentee workers.” *Id.* at Question 7. When asked for additional information, Ms. Dunlap provided her account of the incident in question.

She stated that her remake partner left early, leaving her unable to do remake of ballots in the primary conference room. *Id.* at Question 9. She states that Director Poe asked her to help with administrative tasks in the administrative offices. *Id.* She states that “Director Poe and I sat at a table in the open area of the administrative office where there was a number of ballots Commission[ers] had recently approved for tabulation.” *Id.* She continued, “we opened the ballot only envelopes and stacked the ballots to be take to the tabulator.” *Id.* She then stated, “[a] few of those would not have been accepted by the machine and would need to be remake.” *Id.* She states that she and “Director Poe walked to the room where the ballots were being remake and I placed them in a box at a station to be remake.” *Id.* She goes on to deny the allegation that she left “the remake room with” ballots. *Id.* She also denies that her account of the incident to Commissioner Stahr was that she was

“separating absentee ballots in Assistant Director Camp’s office or working with him.” *Id.*

Commissioner Stahr stated she “personally witnessed the removal of absentee ballots from public view by Mr. Camp and Ms. Dunlap, ordered by Mr. Camp.” Stahr Responses Question 25. She continued, that on “November 6, PCEC Staff and an absentee worker left the public duplication of ballots with an envelope full of voted ballots.” *Id.* She then states, “[a]round one hour later, the worker returned with just the loose voted ballots in hand (contents had been separated).” *Id.* She states she questioned the absentee clerk about this, and recounted that it was explained as “she [the absentee clerk] and PCEC staff were separating the ballots from the envelopes and contents in an office so they could get through the process faster the next morning despite the law requiring it to be conducted in public view.” *Id.* She also stated that she “did not have access to the Office to determine what was occurring behind closed doors as I was locked out.” *Id.* She further states that part of the concern she had with this incident was based on the lack of a solid number of ballots that needed to be remade. She claims that estimates were provided of between 1200-1500 ballots, when only 831 had to be remade. *Id.*

She states that Mr. Camp’s office is in the Election Department Suite and is accessible by a keypad locked door, to which the Commissioners were not provided the code. *Id.* She states further that the “main suite door was locked.” *Id.*

Consequently, the evidence and testimony support the allegation that Mr. Camp and Ms. Dunlap both left the conference room, where remaking of ballots was occurring in public view. Their departure from the area that was “open” to the public and which was being viewed by poll watchers created concern. Commission Stahr believes they left with an envelope “full of voted ballots” and at the Direction of Mr. Camp, however, the evidence is inconclusive as to this point. Ms. Dunlap denies

this allegation and denies that she was operating at the behest of Mr. Camp.

Commissioner Stahr admits that she does not know what happened in the office suite as she did not have access to that portion of the building. The evidence supports the allegation that Commissioner Stahr, nor the public had access to the Office Suite. This allegation is confirmed by Ms. Dunlap statements that the offices were only open to “Staff and absentee workers.” Based on prior evidence, the Commission faced challenges when attempting to access the office suite.

Ms. Dunlap states she engaged, with Mr. Poe, in ballot separation activities in the office suite, after leaving the public area of the conference room. She further confirmed that she returned from the office suite, which was not open to the public, with a stack of raw ballots to be remade.

The lack of public access to the office suite, thus lack of public view of the separating of ballot materials in the office suite, coupled with the lack of numerical control on the potential universe of ballots to be remade, combined with lack of clarity on what exactly Ms. Dunlap carried out of public view, combine to cause her return to public view with raw ballots highly suspicious behavior. The testimony from Mr. Poe and Ms. Dunlap lead Staff to believe that the combination of circumstances created the appearance of impropriety, but do not believe that Ms. Dunlap or Director Poe altered or otherwise improperly manipulated any ballots, as there is no evidence, other than the simple circumstances of this event, to lend support to such an accusation.

8. *Inclusion of 327 Disqualified Ballots in Totals. (SBEC 2020-039 III.C.; and SBEC 2020-041 II.; SBEC 2020-046 II.C.1. and III.; and SBEC 2020-051 I.A.)*

Staff starts this portion of the investigation with the clearly established fact that disqualified ballots were improperly tabulated with

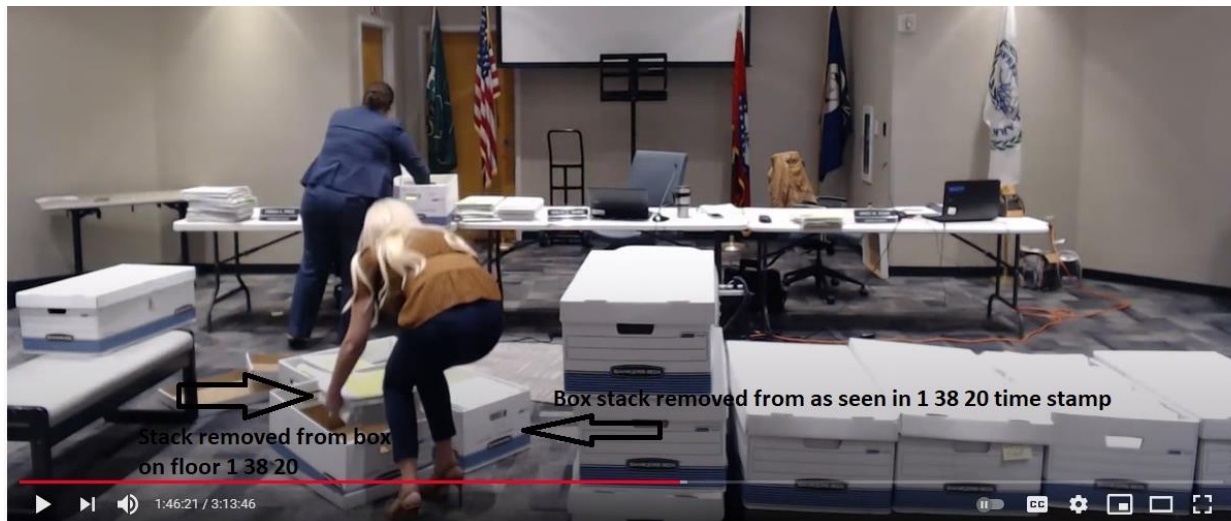
the election results, and they were tabulated and processed in such a way that the improper ballots could not be culled from the election results. See Poe Memo of November 12. Thus, ballots that should not have been counted, were in fact, included in the election results for Pulaski County. See Stahr Dep. Part 2 at 137. Taking this known declaration into account, Staff endeavored to understand which ballots were improperly tabulated, and how they were improperly tabulated.

Staff's review of the deposition testimony and subsequent timeline of events reveal that the improper tabulation occurred on November 10, 2020. Stahr Dep Part 1 at 132-133. The day before, on November 9, 2020, the Commission had approved certain provisional ballots for tabulation, including no id, but optionally signed provisional ballots. *Id.*

Staff reviewed the election commission meeting recorded for November 9, 2020. In that meeting, Election Department staff delivered four boxes of optionally signed provisional ballots.

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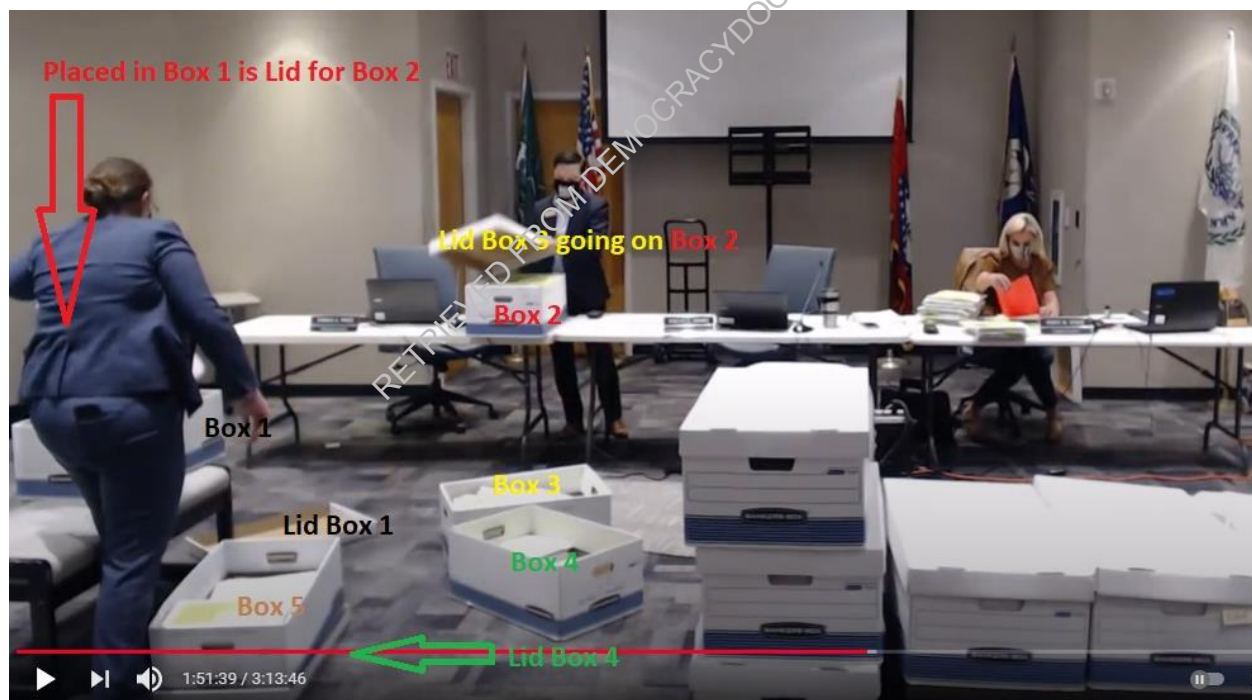


provisional ballot review

190 views • Streamed live on Nov 9, 2020

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Figure 42. Stacks seen on the table, and stacks being placed in boxes brought in by Election Department staff.



provisional ballot review

90 views • Streamed live on Nov 9, 2020

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Figure 43. Boxes counted and identified for tracking purposes.





provisional ballot review

Figure 44. Final 3 of 5 boxes filled with reviewed and approved ballots for tabulation. 2 of the 5 boxes are empty and sitting on bench to the left.



Figure 45. Poe transporting 3 of 5 boxes with reviewed and approved ballots to storage for processing on November 10.



provisional ballot review  
 Figure 46. Poe Labeling boxes before removal from Commission meeting.

From that review, they discovered thirteen (13) ballots that had been recommended for approval by the Clerk's office, that did not have a signature on the optional verification line.

The commissioners reviewed 1,615 provisional absentee ballots that were submitted without a copy of their I.D., but they signed the optional verification of identity. These ballots were to be tabulated on Tuesday, November 10, 2020 at 9:00 a.m. Chair Gomez read the names of the 13 voters whose provisional absentee ballots will not be counted because the optional verification of identity was not signed and the voter did not provide I.D. Commissioner Price moved to accept the 1,602 provisional absentee ballots that did sign the optional verification of identity and reject the 13 that did not sign the optional verification of identity; seconded by Commissioner Stahr. Motion passed by voice vote.

Figure 47. Excerpt of November 9, 2020 PCBEC minutes.



At the end of the evening, the ballots from the four original boxes were condensed into three banker boxes. These three bankers' boxes were removed from the room by Director Poe. See above figure 34.

On November 10, 2020, Director Poe removed three boxes from storage and transported to the absentee clerk processing area so that these approved ballots could be separated from their envelopes and placed in ballot transfer boxes. This process was initially done in the morning. However, it was stopped at some point because the tabulation of the separated ballots would take some time. While this first batch of ballots were being tabulated, Director Poe re-tasked the workers to preparing 2,000 provisional ballot notices to effected voters. The YouTube videos for November 10, 2020 depict this process.

In the afternoon session, these same workers were divided into two groups. One group was to locate some ballots that had been identified for counting but were still in boxes of do not counts. The second group took the remaining ballots from the three bankers boxes approved for tabulation by the Commission the night before and began separating the remaining provisional ballot materials so the ballots could be tabulated. The YouTube Videos for the afternoon of November 10, 2020 depict this process.

Staff notes that the video recordings for November 9<sup>th</sup>, and November 10<sup>th</sup> provide insightful information on this processing.

Thus, the video evidence supports the theory that the improperly tabulated ballots were in the boxes reviewed by the Commission on November 9, 2020. The video evidence suggests that their meeting condensed the provisional ballots to three boxes, and that the next day the clerks worked from the same three boxes. Because of this, Staff inquired of the processing of provisional ballots before reaching the Commission.

During Staff's onsite inspection and interviews, Staff learned that provisional ballots were physically transferred to the Clerk's office for verification purposes. See Also Stahr Dep. Part 1 at 150-151. Staff also learned that the bankers' boxes were not sorted by type before being sent to the Clerk's office, such that the universe of provisional ballots were in

each of the boxes transferred to the Clerk's office. See Also Poe Dep. Part 2 at 25-26.

Staff's conversation with County Clerk's staff supported this statement. Staff learned that the Clerk's office staff processed the provisional ballots, review whether the voter was lawfully registered and reviewed whether the optional signature was signed. See *Id.* at 26-27. Clerk's staff relayed that the only organization that they recalled was that the provisional ballots were generally grouped by polling location. Further, Clerk's staff stated that they did consolidate the provisional ballots into a lesser number of boxes, because the boxes they received were not full. The Clerk's staff also relayed that they did not alter the organization of the provisional ballots but worked through them and placed them back in the order in which they were received. See *Id.*

It is unclear, and Staff has been unable to identify the specific process utilized by the Election Department to sort and separate provisional ballots from those approved for counting and those not approved. Provisional ballots were passed from Election Department officials to the County Clerk's office for processing, and then returned to Election Department custody. Staff also understands that several rounds of provisional ballots were passed between Election Department staff and the Clerk's office because some materials were poorly printed or parts were cut off, and those ballots would be processed again to get legible information for determination.

Staff notes that there was a reoccurring issue of locating ballots that were to be counted located in boxes that were labeled for not counting. Or locating ballots that were identified for tabulation and which were signed off on the tracking spreadsheet as tabulated when the ballot was in a box of do not count and the ballot unopened. While these issues were resolved by the Commission, their existence evidences the difficulties encountered in processing and handling multiple categories of ballots at multiple times throughout the post-election processing.

Consequently, Staff is unable to identify a specific person or event that resulted in the tabulation of disqualified ballots. The evidence demonstrates that internal controls, between Election Department and County Clerk's office and use of multiple groups of absentee workers

doing multiple tasks simultaneously caused a confusing process for ballot categorization and subsequent tracking.

The lack of individual responsibility for boxes of ballots, allowed numerous individuals to access boxes without clear ownership for each box. The evidence supports that the improper ballots were included in the three boxes approved by the Commission on November 9, 2020 and tabulated on November 10, 2020. Mr. Poe pulled three boxes from the centralized storage for poll workers to remove ballots from the provisional envelopes on November 10, 2020, and that was done in two sessions, one morning and one afternoon.

The evidence demonstrates a systematic failure to account for, track, and assign individual responsibility for provisional ballots as they were being processed in the days between the election and improper tabulation on November 10, 2020. The lack of bankers box listing the number of ballots inside, and the moving of ballots from one box to another box without clear delineation of purpose or tracking of numbers, combined with the necessary reliance on spreadsheets because of the total numbers of ballots, all combined to create an opportunity for this error to occur. The Commission has the responsibility for proper tabulation but is reliant on the thoroughness and quality control of Election Department Staff, County Clerk Staff, and hired poll workers. The constant movement of ballot packets which had a physically circular flow within the Regional Building added to the opportunity for improper ballots to be included in the tabulation.

9. *Access to Ballots and Election Materials*

a. **ForARPeople members accessing ballot materials.**

i. ***ForARPeople handling the materials personally.*** (SBEC 2020-039 IV.C.; and SBEC 2020-041 IV.A.; and SBEC 2020-046 II.B.; and SBEC 2020-051 I.C.)

The evidence supports the allegation that representatives of ForARPeople, in response to an FOIA they filed, were permitted to access and handle election materials. Ms. Camille Bennett responded to Staffs Notice and questions regarding this topic. She confirmed that personnel with ForARPeople did file an FOIA and in cooperation with the Pulaski County attorney had the FOIA fulfilled. See Bennett Responses Question 10. She stated that the County Attorney objected to and did not permit her personnel to access or review “any voter absentee ballots material relating to those ballots that were still provisional or under review (canvassing) by the Commission.” *Id.* She stated Mr. Poe handled the boxes, and that two poll workers were assigned to monitor the review by her personnel. *Id.*

She stated that “the only material we reviewed were from those voters whose vote the Commission had rejected from counting.” *Id.* at Question 11. She states that she instructed her personnel to photograph, “the Absentee Ballot Application, the return address on the mailing envelope, the Irregular Absentee Form, and the Voter Statement.” *Id.* at Question 12. She states to accomplish this, “documents were removed from the mailing envelope.” *Id.*

She explained that she instructed the volunteers to “look at the listed reason for denial and to document evidence that supported or failed to support the state reason.” *Id.* She continued, giving the example, “if the denial was based on “Voter Statement Missing” and no voter statement was in the outer envelope, ... to see whether a Voter Statement appeared to be contained within the ballot envelope.” *Id.* She continued, “[b]ecause the Voter Statement is dark read, its presence was often visible through the secrecy envelope even though the ballot was not visible.” *Id.* She stated, that in “no circumstances were [her] volunteers to open the ballot secrecy envelope.” *Id.*

Staff spoke with Mr. Adam Fogleman, attorney for Pulaski County, who stated he did not recall the specific instructions given regarding accommodating this FOIA request, but stated he agreed that only giving access to disqualified ballots would be his approach to protect live ballots and accommodate the lawful FOIA request. See Staff Memo May 10, 2021 – Telephone Interview – Adam Fogleman.

Mr. Camp, in response to Staff's question on this issue confirmed that ForARPeople were granted access, in response to a FOIA, to "absentee ballot 'packets' which had been made provisional or disqualified." Camp Responses Question 74. He continued that the inspection process was overseen by sworn election officials. *Id.* He claims that the "inspection process stretched into several days and the process may have been amended." *Id.*

Mr. Poe testified that the ForARPeople inspected the voter materials for "disqualified ballots." Poe Dep. Part 2 at 174. He stated that ForARPeople were not allowed to handle ballots themselves or view ballots. *Id.* He continued that no inner ballot envelopes were opened in the presence of the ForARPeople. *Id.*

Consequently, ForARPeople filed an FOIA request to inspect certain voter materials. They did in fact inspect ballot packets, which included ballots in their inner envelope. The evidence shows that the inspection was performed under the supervision of election officials, with their consent and oversight. There is no evidence that ForARPeople manipulated or mutilated any ballot or ballot packet. The evidence also shows that the materials provided to ForARPeople were disqualified ballots, and not ballots that were still being processed.

- ii. ***Pulaski County Election Staff providing and allowing direct handling of voting materials by members from ForARPeople.*** (SBEC 2020-039 IV.C.; and SBEC 2020-041 IV.A.; and SBEC 2020-046 II.B.; and SBEC 2020-051 I.C.)

As described above, the evidence supports this allegation. Pulaski County Election officials, following the advice of their counsel, permitted representatives ForARPeople to handle, inspect, and photograph voter statements, mailing information, and absentee ballot applications of disqualified absentee ballots. The evidence supports the undisputed fact that these ballot packets contained voted ballots within the inner ballot envelope. The evidence also shows that the inspection and photographing was done under the direct supervision and observation of election officials.

Consequently, Pulaski County Election Department staff permitted, under supervision and on the advice of its attorney, ForARPeople to handle disqualified absentee ballot packets. The inspection was for information contained on the absentee ballot application, voter statement, and mailing information.

**b. Unsworn Deputy Clerks**

**i. *Use of Unsworn Deputy Clerks during the Canvassing and Counting of Absentee and Provisional Ballots.* (SBEC 2020-046 II.A.1.)**

This allegation relates to post-election processing of election materials. The investigation determined that provisional ballots were delivered to the Pulaski County Clerk's office for verification and processing. However, the allegation is that "unsworn deputy clerks" were present at the PCEC offices during canvassing. However, Staff has been unable to locate evidence that supports this allegation. Staff did receive an electronic file, titled Clerk Staff, which provided 79 different individuals who were deputized as Deputy Clerks under the office of Pulaski County Clerk. See exemplar below:

TERRI HOLLINGSWORTH  
PULASKI CIRCUIT/COUNTY CLERK



401 WEST MARKHAM STREET, SUITE 100  
LITTLE ROCK, ARKANSAS 72201



2019000240

PRESENTED: 01-02-2019 02:40:06 PM RECORDED: 01-02-2019 02:43:20 PM

In Official Records of Terri Hollingsworth Circuit/County Clerk

PULASKI CO, AR FEE \$0.00

### OFFICIAL OATH

**STATE OF ARKANSAS  
COUNTY OF PULASKI**

KNOW ALL MEN BY THESE PRESENTS:

I, **Edward John Rogers**, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Arkansas, and that I will faithfully discharge the duties as Deputy Clerk in the office of Pulaski Circuit County Clerk upon which I am now about to enter.



(signature)

(street address)

Little Rock, AR 72207  
(city, state, zip code)

Sworn to and subscribed before me, Terri Hollingsworth, this 2nd day of January, Two Thousand Nineteen.

Terri Hollingsworth, Circuit/County Clerk

Figure 48.

Staff also received the posted list of appointed poll workers that included 26 pages of appointed poll workers. It is possible that some of these appointed poll workers also worked in the County Clerk's office, but Staff is unable to identify any particular person.

Without a specific allegation of a specific person, Staff is unable to verify if someone other than the 79 identified Deputy Clerks is alleged to have exercised authority outside the scope of their duties as a Deputy Clerk.

Consequently, the evidence is inconclusive to support this allegation, as there is no evidence of a specific individual engaging in activities that is outside the authority of a Deputy Clerk.

ii. ***Deputy Clerks Processing Election Materials outside Public View.*** (SBEC 2020-046 II.A.2.)

The gathered evidence demonstrates that public access to the offices of the Election Department was difficult, if not completely denied during periods of election related activities. However, such actions as tabulation were live streamed to alleviate public access concerns in the Election Department offices. However, outside of the general issues associated with public access, Staff was unable to identify any specific Deputy Clerk who processed election materials outside of public view, such as described as being in the Election Department Offices.

The evidence does shows that provisional ballots were transported to the Clerk's offices for processing and given the restrictions on access to the County Courthouse, it is arguable that this activity occurred outside of public view. However, there is no evidence that the provisional ballot processing was done other than in the open offices of the Clerk's office.

Consequently, there is no evidence that any specific or identified Deputy Clerk processed election materials outside of public view in the Election Department offices. There is circumstantial evidence, that provisional ballots were handled in the Clerk's office when the Courthouse continued to operate on limited access because of the Covid restrictions. There is no evidence that the processing of provisional ballots was done in such a manner to avoid public viewing, but rather done in the public building, and offices of the deputy clerks assigned to review and process provisional ballots as described above.

c. ***Pulaski County Board of Election Commissioners Denied Access to Office Suites and election materials after the election.*** (SBEC 2020-039 II.B.1.; and SBEC 2020-041 IV.B.)



The evidence demonstrates that PCBEC members were not given access to the Office Suites of the Election Department. The multiple statements from Camp, and Poe that the offices were not open to Commissioners, Public, or poll watchers until election night supports this allegation.

There is conflict as to what limitations were placed on Commissioners after election night. While Mr. Camp and Mr. Poe both stated that Commissioners were not permitted until election night, they state that they were permitted through certification. However, while processing remake ballots, Absentee Clerk Dunlap stated that she understood the Offices as closed to all but Election Department Staff and Absentee Clerks. Commissioner Stahr, when discussing the Dunlap/Camp/Poe incident claimed that the Office Suite was closed to the public, and this event occurred after Election night. Lastly, supporting this allegation is the simple fact that the Election Department offices are secured by a keypad lock on the front entrance, and a physical keyed lock on the back door. Commissioners had neither the code nor a key to the Offices. The testimony showed that Commissioners could access any part of the building, as long as a Staff member permitted it, which as discussed above, was a challenge at times.

Consequently, the evidence supports this allegation. There were times when the Election Department offices were open to the public, and times when it was not. The evidence shows that Commissioners could only access the Election Department offices upon the express permission of a staff member. Because of the circular flow of processing ballots and election materials, there were times that the Election Department offices were processing election materials, when the doors were closed and locked.

## **B. Post-Election other issues**

1. *Director Poe allegedly adding a Date of Birth to an Absentee Ballot Application. (SBEC 2020-051 II.)*

Commissioner Gomez provided her account of discovery of an absentee ballot and accompanying application that allegedly been cut off and was missing information on the bottom of it. She stated she recalled

this ballot because information was missing from the bottom of it. See Gomez Response Question 45. She stated that it appeared the bottom had been cut off when printed and wanted a better copy of it to canvass the ballot. *Id.* She states that there was writing “in pen on the document... Poe admitted he filled in [the] missing voter information.” *Id.* She continues, “with a straight face – Poe claimed he ‘was doing what we wanted.’” *Id.* She believe the document that he allegedly filled in was the absentee ballot application. She stated she believe Mr. Poe wrote in “Dominque Smith, 4322 Barrum (sp) Pike, North Little Rock, 72117.”

Commissioner Stahr recounts this incident in her Deposition. She stated, that on the morning of November 14, around 3 or 4 am., they located “an absentee ballot that was cut off on the end.” Stahr Dep. Part 2 at 81. At the bottom is an area the voter is to “sign, put their date of birth and information, and it was missing part.” *Id.* She stated that “someone had to use a pen and put that information in.” *Id.* She claims that “Direct Poe said he put that information there.” *Id.* at 81-82. She states they sought the full document from the Clerk’s office, but “they did not have it.” *Id.* at 72. She claims that the ballot was ultimately not counted, “[b]ecause it was not the information from the voter.” *Id.*

Staff has not received a written response from Mr. Poe, and thus is unable to provide his account of this incident.

Consequently, there are two statements made under oath, stating that an Absentee Ballot Application, with the bottom portion missing, was discovered with additional writing added. This additional writing is alleged to have been made by Mr. Poe, according to Commissioner Gomez and Commissioner Stahr. Based on these two sworn statements, there is a factual basis supporting this allegation.

**2. *Director Poe delaying publication of the required notice to call a PCBEC meeting on November 10, 2020. (SBEC 2020-051 III.A.)***

Mr. Poe was asked about this allegation in his deposition, and he provided direct and responsive answers. Mr. Poe states that “while [he] was handling the preparation of the tabulation, the remakes, and the

preparing the notice to go out to those provisional voters, I also had to go and put a stop to a Zoom meeting they had scheduled without public notice and without – without the other commissioner.” Poe Dep. Part 2 at 75. He claims that the Commission had called a meeting around noon, but no notice was given. *Id.* He claims that they “tried to have a meeting with less than a 30-minute public notice.” *Id.* He claims that “hadn’t put out the notice at all.” *Id.* Staff notes that his statement is unclear as to who hadn’t put out the notice, but Mr. Poe continued that “Commissioner Price had also let them – let them both know that he would not be available for that meeting, but they insisted on carrying on with that anyway.” *Id.* He stated the [Commissioner Gomez] “contacted other staff members, Jody and Betty Green to set up that meeting without my knowledge.” *Id.* He then says, “I had to go and put a stop to that to prevent them from violating FOIA.” *Id.* He states, he “directed them” to not facilitate the Commissioners request for an emergency meeting. *Id.* at 76.

Commissioner Gomez included a series of emails dated November 10, 2020, wherein she is emailing Mr. Poe to put notice out for an emergency Commissioner’s meeting. The series of emails began at 8:58 a.m. with a request to PCBEC members to pause “opening and processing” of provisional ballots by Mr. Doyle Webb. The Webb email was forwarded to Mr. Poe at 9:11 a.m. requesting that provisional ballots for House 32 and House 38 until they could meet on Thursday. At 9:54 Commissioner Stahr emails Mr. Poe and the other Commissioner expressing her concern of being able to process these ballots on Thursday and upload tabulation on Friday.

Chairwoman Gomez then emails at 9:59 requesting a time that commissioners can meet on Thursday. This email also directed Poe to have “a robust list of poll workers ready to go for Friday.” Both Commissioner Stahr and Commissioner Price stated they could be available at 5 pm on Thursday, in response to Chairwoman Gomez’s email. At 10:03, Chairwoman emailed, “5 it is.” At 10:32, Chairwoman Gomez emailed Mr. Poe asking, “Did you go on your own and request a legal opinion from Mr. Fogleman without the consent of the commission?” She then states, “I am calling an emergency meeting today.” She directed Mr. Poe to “Find out when the commissioner can be available.” Lastly,

she directed “Do not do anything further until the commission meets.” At 10:40 Commissioner Stahr responds that she can meet that day, November 10. Chairwoman Gomez emails at 10:49 stating, “[i]f we can address all these things Thursday that is fine.”

She again states, “Mr. Poe please halt all processes today until we can meet.” Lastly, she says, “Whenever the Commissioners are available either today or tomorrow at 5 pm.” Then at 10:57 am, Commissioner Price responds to the email thread, “I am not available to meet today until past 8 pm due to a work conflict.”

At 11:03, Chairwoman Gomez again states to Mr. Poe, “halt all processes until the Commission can meet on Thursday.” Commissioner Stahr then emails the thread at 11:29 asking if they could call “an emergency zoom meeting, so we can discuss this issue in the next 30 minutes and in the public view.” Chairwoman Gomez then emails the thread asking, “I request calling an emergency meeting via zoom.” It continued, “[w]hen is the earliest we can get this set up?”

Mr. Poe responded at 12:06 with “FOIA requires a minimum of 2 hours for an emergency meeting per ACA 25-19-106(b)(2).” The next email is an exchange between Mr. Poe and Commissioner Stahr, wherein Commissioner Stahr states, “I sent the request at 11am, so what the notice sent out for 1pm?” Mr. Poe in apparent reply to this email, stated, “I have not been given a time on the meeting, so no notice can be sent until I get that.” This exchange occurred at 12:11 pm. At 12:15, Chairwoman Gomez then emails to Mr. Poe, “2pm or as soon as possible.” At 12:22, Mr. Poe emails back, “Just to be clear, you want to meet without Commissioner Price?” He continued, “Also, what is on the Agenda?” At 12:29, Chairwoman Gomez replied to Mr. Poe with, “Opening and processing provisional ballots.” She continued, “We can meet and any commissioner not able to meet in person can meet via zoom.”

At this point, Mr. Poe forwarded Mr. Price’s email stating, “In case you missed it:” that Commissioner Price was not available until past 8 pm. For emphasis he appears to have changed it to red lettering, and underlined, “today until past 8 pm.” This was sent at 12:33. Below the forwarded email, he wrote, “Commissioner Price is not available until

after 8 p.m.” He then asked, “are you saying you wish to have a Zoom meeting without him present?”

At 1:07 pm, Chairwoman Gomez states to Mr. Poe, “I haven’t seen a notice sent out.” She then asked, “Why has this not been done?” To which, Mr. Poe, at 1:10, responded, “Dunno, Lemme check.”

Staff observed several notices posted on the PCBEC Facebook Elect page. Staff reviewed the Pulaski County Election Commission page but did not observe a notice of any meeting for November 10 in the historical timeline. There is a post on November 9, 2020 and the next one is announcing a meeting for November 16, 2020. At 1:51, they posted a notice of meeting at 4:00 pm on the Pulaski Elect page:



Figure 49.

Staff noted a second posting on the Pulaski Elect Facebook page that was posted at 2:25 pm on November 10<sup>th</sup>, announcing a meeting at 5:00 pm:

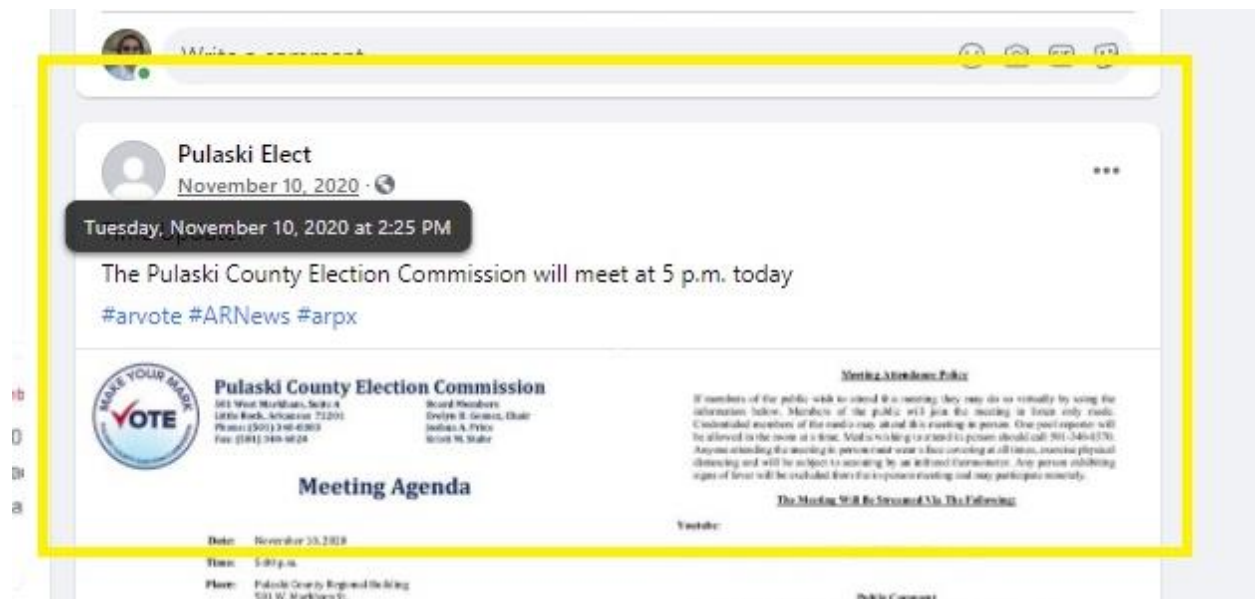


Figure 50.

Lastly, Staff noted a posting at 3:15 on the Pulaski Elect page cancelling the announced meeting that evening.

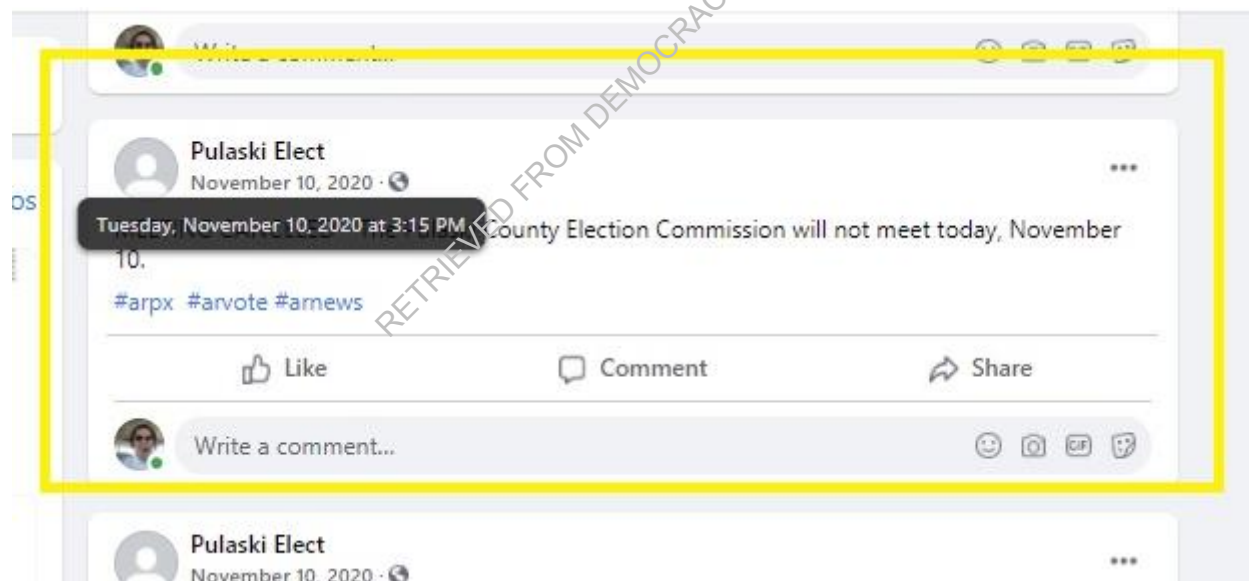


Figure 51.

Consequently, taking the testimony of Mr. Poe, combined with the email exchange, the evidence supports the allegation that Mr. Poe purposely delayed providing notice for an emergency meeting of the PCBEC. It is worth note, that the 327 improperly tabulated ballots were from the batch of provisional ballots tabulated on the day this email

exchange occurred. Staff's review of the records and minutes show that no meeting was held on November 10, 2020.

3. *Allegations that ForARPeople engaged in post-presentment of identification activities in violation of election law. (SBEC 2020-039 IV.B.)*

Ms. Bennett stated that no one with her group "received, reviewed, or approved any photo identifications for the purpose of allowing a voter's provisional absentee ballot to satisfy the voter ID requirement or to be counted." See Bennett Responses Question 3. She continues, "ForARPeople set up a tent outside the Pulaski County Courthouse and provided copiers for use by individuals in the general public to make free photocopies of the individuals' identification cards." *Id.* She states her volunteers assisted only in making copies for individuals. *Id.* She then states that the voting individual "interacted directly with the Clerk or her staff, who received and reviewed the copies of the individuals' identifications for purposes of allowing a voter's provisional absentee ballot to satisfy the voter ID requirement or to be counted." *Id.* She stated that to her knowledge, "no individual travelled of the grounds to make a photocopy of any voter's identification or documents that verify the voter's registration status." *Id.* at Question 6.

Ms. Bennett did state that she believed an "Austin Bailey traveled to a nursing home or long-term care facility to report on an official of the County Clerk's office assisting a resident of the facility to verify the resident's identity or to cure a ballot." *Id.* at Question 7. She continued, "Austin Bailey did not make photocopies of any person's identification at the facility, nor did she handle or make photocopies of any person's documents."

Clerk Hollingsworth provided answers to this issue as well. She stated that personnel in her office did not accept voter verification of registration from anyone but the voter himself or herself. See Hollingsworth Response Questions 27 and 28. She stated that she herself "went to the residence of Rubye Fleming, Alyce Flakes & Harold Rice and verified their ID and used her cellphone to email the photo ID to the office

to be printed.” *Id.* at Question 29. She continued, that “Assistant Chief Deputy Debrah Mitchell verified the identity of Annie Clinton & Iiona Fontenette at their residence and took a photo of the picture with her phone and emailed them to the office to be printed.” *Id.* She also stated, that her “staff personally verified the identity of each voter in person.” *Id.* at Question 30.

Consequently, the evidence does not support this allegation. Both Ms. Bennett and Clerk Hollingsworth described each group’s respective involvement in the post-present process and there is no evidence that staff or personnel with either group handled identification in an improper manner.

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# EXHIBIT M

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VIDEO FILE BATES NUMBERED: PL037503

ARKANSAS STATE LEGISLATURE

8

93RD GENERAL ASSEMBLY - REGULAR SESSION, 2021

HOUSE COMMITTEE ON STATE AGENCIES AND GOVERNMENT

9

AFFAIRS

MONDAY, FEBRUARY 1, 2021

10

9:30 A.M.

ROOM 151, STATE CAPITOL

11

LITTLE ROCK, ARKANSAS

SOURCE: A TRUE AND CORRECT COPY OF THIS VIDEO IS

12

AVAILABLE AT:

[HTTPS://WWW.ARKLEG.STATE.AR.US/COMMITTEES/MEETINGS](https://www.arkleg.state.ar.us/committees/meetingspast?CODE=900&DDBIENNIUMSESSION=2021%2F2021R)

13

[PAST?CODE=900&DDBIENNIUMSESSION=2021%2F2021R](https://www.arkleg.state.ar.us/committees/meetingspast?CODE=900&DDBIENNIUMSESSION=2021%2F2021R)

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TRANSCRIBED BY: Abby Rhodes, CSR, RPR

1 did affirm after the legislature -- the House had  
2 already voted for voter ID proposal had been presented  
3 to me and our idea had been presented to me to allow a  
4 substitute for voter ID, which would be a signature, a  
5 sworn statement.

6 In this past election, we have found out how  
7 fraught that is with problems. The Los Angeles Times  
8 did a very in-depth article about saying that the most  
9 significant flaw that happens or the main reason that  
10 ballots, many ballots get rejected are because of  
11 signatures.

12 And the real problem there for --  
13 forensic -- a forensic analyst who does signatures  
14 said that to adequately do that to verify signatures,  
15 sometimes it takes hours. We're asking our election  
16 workers, many of them who are not trained in verifying  
17 signatures, we're asking them to do it in seconds.

18 So for that reason, I've brought a proposal  
19 to you today. I'm not going to belabor it because  
20 you've heard all the debates, you've heard that  
21 80 percent of Arkansans support voter ID, but we had  
22 significant problems in Arkansas with signature  
23 verification. There is no uniform standard for  
24 signature verification.

25 State of Florida is one state that does

1 but surely, and that those same studies point out that  
2 the only thing that gives many Americans confidence  
3 that their elections are fair would be that they know  
4 that the people who are voting are who they say they  
5 are. And the only absolute standard for that is to  
6 present -- present a photo ID.

7 In the Los Angeles Times article that I  
8 referenced earlier, one analyst said that the  
9 signatures that are more often thrown out are -- are  
10 fake ones that are -- or excuse me. The biggest error  
11 are fake ones being accepted as real rather than real  
12 ones being accepted as fake.

13 So there -- it's ripe with errors is what  
14 this one forensic analyst said. It's his job. That  
15 is what he does professionally is to compare  
16 signatures.

17 One of the other issues that we had in  
18 Pulaski County, and I was glad to receive all of these  
19 numbers that were pointed out by the lady from  
20 Indivisible because it points out what a significant  
21 issue it was in Pulaski County.

22 But in any of those -- these cases where  
23 provisional ballots may have been rejected because of  
24 a signature, they could come back with an ID, which  
25 80 percent of Arkansans thought they should have in

# EXHIBIT N

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**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
FIFTH DIVISION**

**THE LEAGUE OF WOMEN VOTERS  
OF ARKANSAS and ARKANSAS UNITED et al.**

**PLAINTIFFS**

**v. CASE NO. 60CV-21-3138**

**JOHN THURSTON, in his official capacity  
as the Secretary of State of Arkansas;  
and SHARON BROOKS, BILENDA  
HARRIS-RITTER, WILLIAM LUTHER,  
CHARLES ROBERTS, JAMES SHARP, and  
J. HARMON SMITH, in their official capacities  
as members of the Arkansas State Board of  
Election Commissioners,**

**DEFENDANTS**

**EXPERT AFFIDAVIT OF DR. LINTON A. MOHAMMED**

I, Linton A. Mohammed, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify to the facts set forth below based on my personal knowledge and having personally examined all records referenced in this affidavit, and further state as follows:

1. I am a Forensic Document Examiner ("FDE"), certified by the American Board of Forensic Document Examiners. I have been engaged in this matter on behalf of Plaintiffs to opine on the reliability of the procedures and techniques of the Arkansas signature verification process for absentee ballot applications as set forth in Arkansas elections laws and guidance.

**I. QUALIFICATIONS**

2. I am a U.S.-certified and internationally recognized FDE, and the focus of my research and professional experience is on handwriting and signature identification and the scientific approach to analyzing questioned signatures. I am, and since 1998 continuously have been, certified by the American Board of Forensic Document Examiners (ABFDE), the certifying board

for FDEs in North America. I am also certified in document examination by the Chartered Society of Forensic Sciences in the United Kingdom. I specialize in the forensic science of analyzing genuine, disguised, and simulated signatures.

3. I co-founded and I am currently the principal at Forensic Science Consultants, Inc., where I conduct forensic document examination casework and research on handwriting and signature examination as well as other forensic document examination (such as document alterations, obliterations, indented impressions, or pages added or removed). I am also an adjunct professor at Oklahoma State University, where I teach graduate courses on the scientific examination of questioned documents.

4. During and prior to my time with Forensic Science Consultants, Inc., and for nearly fourteen years, I worked as Forensic Document Examiner and Senior Document Examiner for the San Diego Sheriff's Department Regional Crime Laboratory. There, I conducted examinations of signatures and handwriting for cases investigated by San Diego County agencies as well as by local police, state, and federal agencies. I also served as Technical Lead of the Questioned Documents Section of the Regional Crime Laboratory, and in that capacity trained investigators and attorneys, provided expert testimony, conducted research, and produced the Quality Manuals for the Questioned Documents Section. Prior to that, I worked internationally as an FDE at the Laboratory of the Government Chemist in the United Kingdom, the Caribbean Institute of Forensic Investigations Ltd. in the West Indies, and the Trinidad and Tobago Forensic Science Center in the West Indies. In those roles, I conducted forensic document examinations and testified in criminal and civil cases for multiple police forces and other government agencies.

5. I am a Fellow of the Questioned Documents Section of the American Academy of Forensic Sciences ("AAFS"), a Fellow and diplomate of the Chartered Society of Forensic

Sciences, and a member of the Canadian Society of Forensic Science. I served as the Chair of the AAFS Questioned Documents Section from 2016 to 2018. I am an appointed member and Chair of the Academy Standards Board, which was formed by the AAFS to develop consensus-based standards for the forensic sciences. I served as a member of the National Institute of Standards and Technology's Expert Working Group on Human Factors in Handwriting Examination, the National Institute of Standards and Technology's Organization of Scientific Area Committees' Physics/Pattern Interpretation Scientific Area Committee, and the Scientific Working Group on Documents. I have previously served as President, Vice President, Treasurer, and Director of the American Society of Questioned Document Examiners ("ASQDE").

6. I am the editor of the *Journal of the American Society of Questioned Document Examiners*. I served on the editorial review board of the *Journal of Forensic Sciences* from 2005-2020, and I currently serve on the editorial review board of *Forensic Science and Technology*. I am a guest reviewer for the following journals: *Forensic Science International*, *Science & Justice*, *Australian Journal of Forensic Science*, *Egyptian Journal of Forensic Sciences*, and *IEEE Transactions on Cybernetics*.

7. I have published eighteen peer-reviewed articles on signature and handwriting examination, and forensic document examination. Many of my articles focus on the analysis of genuine, disguised, and forged signatures, and handwriting examination. I have also given numerous presentations and workshops on signature and document examination worldwide, including in the United States, Australia, Brazil, Canada, China, Latvia, Poland, Saudi Arabia, Scotland, and Turkey.



8. In 2019, I authored a book titled *Forensic Examination of Signatures*, which describes and discusses state of the art techniques and research in signature examination.<sup>1</sup> I co-authored a book in 2012 titled *The Neuroscience of Handwriting: Applications for Forensic Document Examination*, which integrates research in the fields of motor control, neuroscience, kinematics, and robotics to evaluate questioned signatures and handwriting.<sup>2</sup> The book sets forth, among other things, the scientific fundamentals of motor control as relevant to handwriting; the impact of age, disease, and medication on handwriting; and a quantitative approach to signature authentication, including kinematic and laboratory analyses of genuine versus disguised versus forged signatures.

9. In 2012, I received the American Board of Forensic Document Examiners' New Horizon Award "In Recognition of His Exceptional Contributions in Scientific Research for the Advancement of Forensic Document Examination." In 2019, I received the American Academy of Forensic Sciences Questioned Documents Section's Ordway Hilton Award "In Recognition of Outstanding Contributions to Forensic Document Examination."

10. I have testified as an expert witness in court and depositions more than 150 times on issues of signature, handwriting, and document examination in both civil and criminal cases, including cases in the United States, England, Trinidad & Tobago, and St. Vincent.

11. My testimony in cases involving signature-matching processes related to absentee ballots has been accepted in several courts. *See, e.g., Richardson v. Tex. Sec'y of State*, 485 F. Supp. 3d 744, 787 (W.D. Tex. 2020); *Self Advocacy Solutions N.D. v. Jaeger*, 464 F. Supp. 3d 1039, 1045, 1053 (D.N.D. 2020); *Frederick v. Lawson*, 481 F. Supp. 3d 774, 795 (S.D. Ind. 2020);

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<sup>1</sup> Mohammed, L. (2019). *Forensic Examination of Signatures*. San Diego: Elsevier.

<sup>2</sup> Caligiuri, M.P., & Mohammed, L.A. (2012). *The Neuroscience of Handwriting: Applications for Forensic Document Examination*. Boca Raton: CRC Press/Taylor & Francis Group.

*Saucedo v. Gardner*, 335 F. Supp. 3d 202, 212-13 (D.N.H. 2018); *see also Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1320 (11th Cir. 2019).

12. I received a Ph.D. from La Trobe University in Melbourne, Australia in human biosciences, where I wrote my thesis on signature examination: “*Elucidating static and dynamic features to discriminate between signature disguise and signature forgery behavior.*” Prior to that, I received my undergraduate degree in science at the University of West Indies; underwent a two-year, full-time training program in Forensic Document Examination at the Trinidad and Tobago Forensic Science Center; and received a master’s degree in forensic sciences at National University in San Diego, California.

13. My *curriculum vitae* is attached as Exhibit A. I am being compensated at a rate of \$400.00 per hour. My compensation in this matter is not in any way contingent on the content of my opinion or the outcome of this matter.

## II. BACKGROUND

14. For this Affidavit, I reviewed the Plaintiffs’ Amended Complaint; 2021 Arkansas Laws Act 736 (H.B. 1715) (“Act 736”) which amended, among other Arkansas statutes, Ark. Code Ann. §§ 7-5-404, 7-5-409, and 7-5-416; the Arkansas County Board of Election Commissioners *Procedures Manual* (2020 Edition); the 2020 County Board of Election Commissioners Training PowerPoint presentation; the Arkansas *Absentee Canvassing Quick Guide*; the Arkansas *Processing Absentee Ballot Exercises*; and relevant academic literature.

15. Arkansas has a signature match requirement for mail-in absentee applications and absentee ballots.

16. Act 736 amended Ark. Code Ann. § 7-5-404(a)(1)(1), which formerly provided that “[a]pplications for absentee ballots must be signed by the applicant and verified by the county

clerk by checking the voter's name, address, date of birth, and signature from the registration records unless the application is sent by electronic means," to require that "[a]pplications for absentee ballots must be signed by the applicant and verified by the county clerk by checking the voter's name, address, date of birth, and signature from the *voter* registration *application* unless the application is sent by electronic means." (emphasis added). In so doing, Act 736 reduced the number and type of comparison signatures that election officials are permitted to use when engaging in signature matching.

17. Act 736 amended Ark. Code Ann § 7-5-404(a)(2)(A), which formerly provided that "If the signatures on the absentee ballot application and the voter registration record are not similar, the county clerk shall not provide an absentee ballot to the voter," to now provide that "If the signatures on the absentee ballot application and the voter registration *application* record are not similar, the county clerk shall not provide an absentee ballot to the voter." (emphasis added).

18. Ark. Code Ann. § 7-5-404(a)(2)(A) does not define what is meant by "similar."

19. Ark. Code. Ann. § 7-5-409(a)(1)(B) states "The county clerk shall verify that the application has been properly signed by the applicant and, if necessary, the designated bearer, administrator, or authorized agent. If the application is not properly signed, the application shall be rejected by the county clerk."

20. Ark. Code Ann. § 7-5-409(a)(1)(B) does not define what is meant by "properly signed."

21. The County Board of Election Commissioners' Procedures Manual, which is issued by the Arkansas State Board of Elections, states on page 40, under the header "Absentee Voting, Rejected Absentee Applications," that "[t]he county clerk cannot send an absentee ballot to a voter

if the signature on the absentee ballot application is not similar to the voter's signature in the voter registration file.”

22. Ark. Code Ann. § 7-5-404 directs election officials to conduct an examination and comparison of a voter's signature as it appears on the voter's absentee application with the signature that appears on the voter's registration application.

23. Based on my understanding, Arkansas election officials are lay individuals, meaning they are not required to have any training, certification, or experience in document examination or signature comparison. In fact, *The Absentee Canvassing Quick Guide* issued by the State Board of Elections states that, “Election officials are not handwriting experts.” See Arkansas State Board of Election Commissioners, *Absentee Canvassing Quick Guide* at 1, [https://static.ark.org/eeuploads/elections/Absentee\\_Canvassing\\_QG\\_-\\_Copy.pdf](https://static.ark.org/eeuploads/elections/Absentee_Canvassing_QG_-_Copy.pdf) (“*Absentee Canvassing Quick Guide*”). As discussed below, this is a major possible cause of error.<sup>3</sup>

24. Based on my understanding, there are no further written statewide standards or procedures to guide election officials in evaluating whether the signature on the absentee ballot application matches the signature on the voter's registration application.

### III. SUMMARY OF CONCLUSIONS

25. Ark. Code. Ann. § 7-5-404 does not set forth sufficient standards for determining reasonably whether a signature on an absentee ballot application matches the voter signature displayed on the voter registration application, which I believe can result in errors. Based on my review of the election statutes, Arkansas also does not require election officials to have any training in signature examination and does not require that election officials be provided with equipment

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<sup>3</sup> *Infra* ¶¶ 32-51.

for effective document examination and signature comparison, such as proper light sources and microscopes.

26. Based on my experience and my review of the academic literature, it is my opinion that in these circumstances, inevitably, Arkansas election officials will make erroneous signature-comparison determinations.

27. Determining whether a signature is genuine or not is a difficult task for even a trained Forensic Document Examiner (“FDE”), as signatures are written in different styles with varying levels of readability and variability. Laypersons, such as Arkansas election officials, have a significantly higher rate of error in determining whether signatures are genuine. Laypersons are also more likely to wrongly determine that authentic signatures are *not* genuine than to make the opposite error. In other words, Arkansas election officials are significantly more likely than trained examiners to make an incorrect signature comparison determination and are particularly likely to incorrectly decide that the signatures are *not* signed by the same person.

28. The high rate of error among laypersons generally results from the inability to distinguish between normal “variations” in one individual’s signatures as opposed to “differences” resulting from multiple signers. An individual’s signatures may vary for myriad reasons, including age, health, native language, and writing conditions. Laypersons lack the tools and training to properly account for signature variation, which leads to erroneous mismatch determinations that are particularly pronounced in populations with greater signature variability, such as the elderly, disabled, individuals suffering from poor health, young voters (ages 18 to 21), and non-native English speakers.<sup>4</sup>

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<sup>4</sup> See Hilton, O. (1969). Consideration of the writer’s health in identifying signatures and detecting forgery. *Journal of Forensic Sciences*, Vol. 14, No. 2, pp. 157-166.

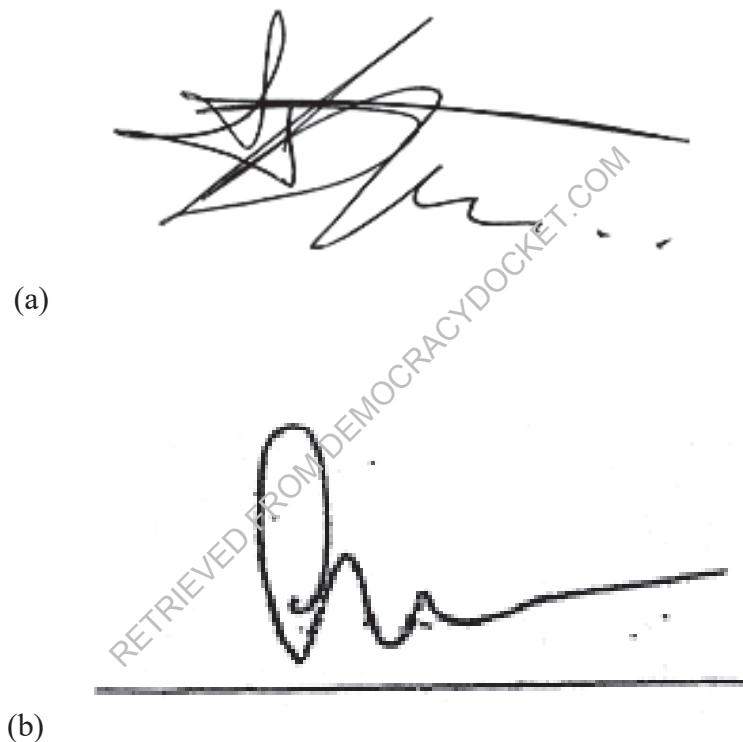
29. These signature-determination errors are further compounded for Arkansas election officials with diminished eyesight or “form blindness” (a type of impairment in visual perception defined below), both of which impact an individual’s ability to make accurate handwriting authenticity determinations. While FDEs are screened for these traits, Arkansas law and guidance regarding signature comparison do not require election officials to undergo such screening.

30. Based on my review of the relevant statutes and guidance, Arkansas no longer permits election officials to compare the signatures on the absentee ballot application to other signatures available on file beyond the voter registration application, nor does it require election officials to spend any minimum threshold of time in comparing signatures. These circumstances are likely to lead to additional errors. At a minimum, even assuming proper examination conditions are present, multiple signature samples are required for an accurate signature determination to account for an individual’s signature variability.<sup>5</sup> For writers who are elderly or have poor health, a larger number of signature samples may be required to determine their range of variation. Yet Arkansas does not require election officials to compare the voter’s signatures on the absentee ballot application to more than one reference signature. In my experience, even assuming optimum conditions, such as (1) complex signatures (see Figure 1) which are the product of a combination of the formation, concatenation, intersection of the strokes, and number of turning points that comprise the signature, (2) original documents, and (3) an adequate number of specimen signatures, a minimum of two hours is required to conduct a signature comparison. The examination requires that the signatures be sketched, so that the ductus of the pen movement can be determined, and the fine and subtle details of the questioned and reference signatures can be examined and closely

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<sup>5</sup> Hilton, O. (1965). A further look at writing standards. *The Journal of Criminal Law, Criminology and Police Science*, Vol. 56, No. 3, p. 383 (recommending a minimum of ten signature samples for accurate signature comparison determinations).

compared. Usually, examinations are conducted more than once as a check and balance. Election officials with insufficient time to evaluate the signature on the absentee ballot application are likely to make additional errors. Based on my review of the relevant Arkansas statutes, election officials are not directed to spend the required minimum amount of time to examine and compare the voters' signatures.



**Figure 1** *Examples of a complex signature (a), and a simple signature (b).*

31. In sum, it is my opinion that Arkansas's current signature matching rules and procedures, which allow individuals without adequate training—and without guidance—to reject the signatures on absentee ballot applications, will result in a significant number of erroneous rejections. In other words, Arkansas election officials are likely to reject properly completed absentee ballot applications, signed by the correct voter, because of their incorrect determination that the signatures on the absentee ballot applications are not genuine.

#### **IV. ANALYSIS AND OPINIONS**

##### **A. Arkansas election officials are likely to make erroneous signature comparison determinations.**

32. Individuals untrained in signature examination, like Arkansas election officials, are highly likely to make mistakes when comparing signatures, particularly by erroneously rejecting signatures as inauthentic or non-matching when they are in fact written by the same individual. These rejections are considered “Type II” errors, and laypersons are more likely than Forensic Document Examiners (“FDEs”) to make such errors for several reasons. First, untrained election officials cannot reliably determine whether signatures are written by different individuals, or whether the signatures are written by one person but exhibit natural variations. Second, untrained reviewers do not account for the many reasons for naturally varying signatures, causing them to erroneously reject authentic signatures. This is particularly true for writers who have less formal education, learned English as a second language, are elderly, disabled, young, or have adverse health conditions. Third, untrained elections officials also fail to account for different signature styles and features, leading to erroneous rejections. Lastly, Arkansas election officials are not tested for form blindness, a condition that can impact their ability to accurately review signatures.

##### **B. Untrained laypersons are more likely than FDEs to erroneously determine authentic signatures are inauthentic.**

33. There are two types of errors in signature examination. Type I errors occur when a non-genuine signature is deemed to be genuine, and a Type II error occurs when a genuine signature is concluded to be non-genuine. In Arkansas’s absentee voting system, a Type II error would be an election official making a determination that the absentee ballot application signature and the reference signature for one voter are “not similar”, when in fact, both signatures were written by the voter. With this Type II error, the voter’s absentee ballot application would be rejected due to



a perceived signature mismatch, and therefore the voter would be potentially disenfranchised through no fault of their own.

34. Compared to FDEs, laypersons have higher Type II error rates. In a 2001 study reviewing the error rates of FDEs and laypersons in comparing six genuine signatures with six non-genuine signatures, laypersons made Type II errors in 26.1% of cases while trained signature FDEs made such errors in 7.05% of cases.<sup>6</sup> That means that laypersons are more than 3 ½ times more likely to declare an authentic signature non-genuine—which, in the case of signatures on absentee ballot applications, would mean that election officials would reject more than 3 ½ times the number of applications than FDEs. It should be noted that for this study, six (6) specimen signatures were used. If, as in Arkansas elections, only one genuine signature is used for comparison, it is highly likely that the error rate for both experts and laypersons would increase significantly.

**C. Arkansas election officials cannot determine reliably whether signatures are written by different individuals, or by one individual exhibiting natural variation.**

35. Determining whether signatures are made by the same or different individuals requires a reviewer to discern whether a feature or combination of features in signatures are “differences” or “variations.” Signatures are the product of a motor program developed in the brain after practice, and then executed with neuro-muscular coordination. Many factors can influence an individual’s motor program and neuro-muscular coordination. These factors cause variations in each person’s signature.<sup>7</sup> Variations are deviations of personal, subconscious characteristics normally demonstrated in the habits of each writer. Individuals may have narrow, moderate, or wide ranges

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<sup>6</sup> Kam M., Gummadidala K., Fielding G., Conn R. (2001). Signature Authentication by Forensic Document Examiners, *Journal of Forensic Science*, 46(4):884-888.

<sup>7</sup> Mohammed, *supra* n. 1-2 & ¶8.

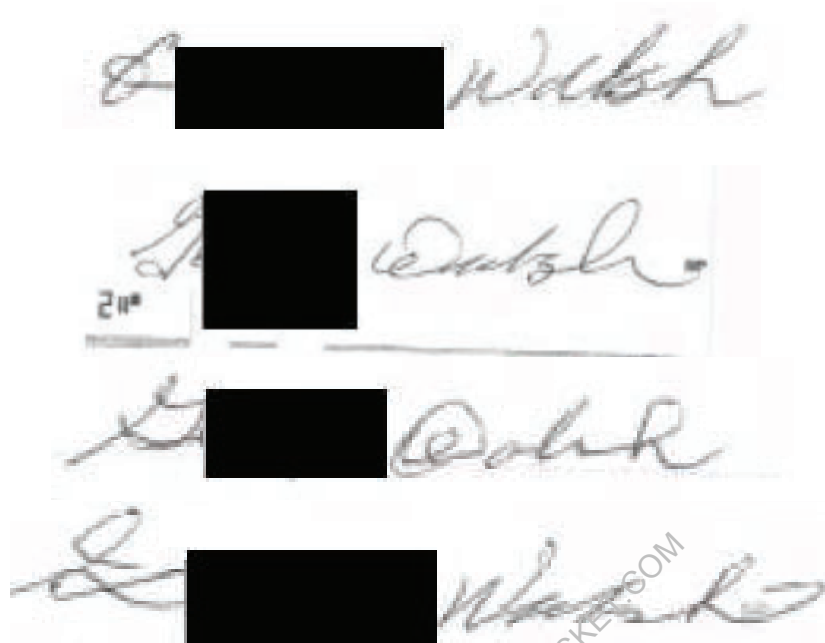
of natural variation. A writer's range of variation can be determined when an adequate amount of specimen signatures are examined. A significant "difference" is a characteristic that is structurally divergent between handwritten items, that is outside the range of variation of the writer, and that cannot be reasonably explained.<sup>8</sup>

36. In the field of signature examination, unexplainable "*differences*" between signatures suggest that different individuals wrote the signatures, whereas "*variations*" between signatures mean that one individual wrote the signatures. Determining whether signature features are "differences" or "variations" is one of the most difficult determinations in signature examinations, even for experienced FDEs.

37. Some writers may have a very wide range of variation. Figure 2 illustrates four signatures of one writer that exhibit wide variation, and if compared, may easily be mistaken as signatures written by four different individuals. Any one signature compared with the other three could be determined by a lay person to be "not similar."

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<sup>8</sup> SWGDOC Standard for the Examination of Handwritten Items, [www.swgdoc.org](http://www.swgdoc.org).



**Figure 2** *Four signatures of one individual exhibiting a wide range of variation, with the name partially redacted for privacy purposes*

38. To reliably make such a judgment requires, at a minimum:

- Extensive training with different types of signatures: Becoming an FDE requires at least two<sup>9</sup>, and typically three, years of full-time training with an experienced examiner, with at least eighteen (18) months of training in the examination of signatures and handwriting. FDEs learn the science of signature examination, gain experience in casework, and are tested for proficiency.
- Adequate magnification and lighting equipment.

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<sup>9</sup> Scientific Working Group for Forensic Document Examination (SWGDOC), *SWGDOC Standard for Minimum Training Requirements for Forensic Document Examiners* at 1, <https://www.swgdoc.org/documents/SWGDOC%20Standard%20for%20Minimum%20Training%20Requirements%20for%20Forensic%20Document%20Examiners.pdf>.

- Excellent eyesight.
- Adequate contemporaneous specimen signatures.
- Adequate time: Insufficient time examining signatures is conducive to making errors. For example, one study found that FDEs spent more time looking at the questioned and reference signatures than laypersons, and their evaluations were more accurate.<sup>10</sup>

39. Without these elements, Arkansas election officials are likely to mistake legitimate and expected “variations” between one individual’s signatures for “differences” in signatures between two individuals and conclude incorrectly that someone other than the registered voter signed the absentee ballot application.

40. Ark. Code Ann. § 7-5-404(a)(1)(A), as amended by Act 736, requires a one-to-one comparison between the signature on a voter’s absentee ballot application and their voter registration application. Based on a one-to-one comparison of a signature on an absentee ballot application and a signature on a voter registration application, election officials have no way to determine if a feature is a difference indicating two writers, or natural variation of one writer. This may lead to erroneous rejections.

**D. Untrained reviewers erroneously reject authentic signatures because they do not account for the many reasons for naturally varying signatures.**

41. Further, an individual’s signatures may vary for myriad reasons, and to properly determine whether signatures are written by the same individual, one must consider the various reasons why features of the same individual’s signatures may visually appear different. To do so,

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<sup>10</sup> Merlino, M., Freeman, T., Dahir, V., Springer, V., et al. (Jan. 2015). *Validity, Reliability, Accuracy, and Bias in Forensic Signature Identification*. Department of Justice Grant 2010-DN-BX-K271, Document 248565, <https://www.ncjrs.gov/pdffiles1/nij/grants/248565.pdf>.

reviewers must possess an adequate number of sample signatures to demonstrate the writer's range of variation. In one of the leading textbooks on handwriting examination, authors Roy Huber & A.M. Headrick identified twenty common reasons why individuals' signatures may appear to show variations:

- Adequacy of standards (or samples): Samples that are inadequate in terms of quantity and contemporaneousness will not be representative of the writer's range of variation. Variations may therefore be interpreted as differences.
- Accidental occurrences: These are one-off variations that will not appear in the specimen signatures.<sup>11</sup> Misinterpretation of these accidental occurrences may lead to an interpretation of a variance as a difference.
- Alternative styles: Some writers have alternate signature styles. This may not be represented in the specimens.
- Ambidexterity.
- Carelessness or negligence.
- Changes in the health condition of the writer.
- Changes in the physical condition of the writer: Circumstances such as fractures, fatigue, or weakness may alter features of an individual's signature.
- Changes in the mental condition or state of the writer.
- Concentration on the act of writing.
- Disguise or deliberate change.

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<sup>11</sup> A specimen signature is a signature that is known to have been written by a person. It is not disputed. Typical specimens are Driver's Licenses and Identification Cards. Specimen signatures are also referred to as Known or Reference signatures.

- Influence of drugs or alcohol.
- Influence of medications.
- Intentional change for later denial.
- Nervous tension.
- Natural variations: These are inherent variations as a result of changes in neuromuscular coordination.
- Writing conditions—*e.g.*, the writer's place or circumstances, such as in a moving vehicle or at a stationary table.
- Writing instrument—*e.g.*, a pen versus a stylus.
- Writing position—*e.g.*, the writer's stance.
- Writing surface—*e.g.*, paper versus electronic screen.
- Writing under stress.

Examiners must consider each of these reasons in determining whether a feature is a “difference” created by different writers or whether the feature is simply a “variation” from the same writer. It is very unlikely that Arkansas election officials will have the knowledge, training, and experience to properly account for these factors. And the Arkansas signature matching statutes do not require election officials to consider adequate samples, as would be necessary for even an expert to distinguish a “difference” from a “variation.”

42. Studies have shown that illiterate writers, writers for whom English is a second language, elderly writers, disabled writers, and writers with health conditions tend to have less pen control than most other writers, and therefore would have a greater range of variation in their

signatures.<sup>12</sup> And the increased variation in the signatures of these groups only compounds laypersons' tendencies to err on the side of incorrectly finding authentic signatures to be non-genuine.

43. Since signatures are developed as a motor program in the brain, the signatures of writers for whom English is a second language are more likely to exhibit wide ranges of variation, as these writers will have to discard their former learned motor program and develop a new one for their new signature style.<sup>13</sup> For instance, a writer who first learned to write in a non-Latin-based script, such as Chinese, will naturally show more variation when signing a document in English than a native writer. Likewise, where the writer's native language is written right to left, such as Urdu, the writer's signature may also be more likely to show variations in letter slanting. Cherokee is a Native American tribe that has its own syllabary.<sup>14</sup> Signatures written by individuals who learned to write using the Cherokee syllabary may appear different to an untrained eye. Qualified, experienced experts in the area of signature verification would know of and account for these factors in evaluating signatures. Arkansas election officials, even if put through a short training session, are unlikely to be able to accurately account for these differences, particularly in an expedient time frame or when only one or a few specimen signatures are available for comparison.

44. Furthermore, young voters (ages 18 to 25) are not likely to have fully developed

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<sup>12</sup> See, e.g., Hilton, O. (1969). Consideration of the writer's health in identifying signatures and detecting forgery. *Journal of Forensic Sciences*, Vol. 14, No. 2, pp. 157-166; Hilton, O. (1965). *A further look at writing standards*. *Journal of Criminal Law, Criminology, and Police Science*, Vol. 56, No. 3, pp.383; Hilton, O. (1956). Influence of serious illness on handwriting identification, *Postgraduate Medicine*, Vol. 19, No. 2.

<sup>13</sup> Mohammed, *supra* n. 1-2 & ¶8.

<sup>14</sup> Encyclopedia Britannica, *Cherokee Syllabary*, <https://www.britannica.com/topic/Cherokee-syllabary>.

signatures. According to one study, “the development and progress of one’s handwriting passes through four stages in the course of a lifetime: (1) the formative stage, (2) the impressionable or adolescent stage, (3) the mature stage, and (4) the stage of degeneration.”<sup>15</sup> The signatures of young voters will fall between stages 2 and 3. The U.S. Postal Service has reported that “writer[s] achieve graphic maturity by the 20<sup>th</sup> birthday.”<sup>16</sup> Handwriting was developed as a means of communication, whereas signatures are developed as a means of identification.<sup>17</sup> Signatures tend to be more personalized and can therefore be considered as an over-developed form of handwriting. Young writers today will likely not have developed signatures until later in life. This is exacerbated as young writers will presumably need to sign less often due to the increased use of personal identification numbers (“PINs”) and other non-handwritten forms of identification. Thus, it follows that their signature development can reasonably be expected to take longer than for previous generations. This will lead to an increased range of variation in a young writer’s signature. The handwriting of adolescents can cause difficulties even for trained FDEs. Comparisons by untrained individuals of young voters’ signatures on the absentee ballot applications will exacerbate the potential for error in rejecting their applications.<sup>18</sup>

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<sup>15</sup> Huber, R.A. & Headrick, A.M. (1999). *Handwriting Identification: Facts and Fundamentals*. Boca Raton, FL: CRC Press.

<sup>16</sup> Bureau of the Chief Postal Inspector (1966), *20<sup>th</sup> Century Handwriting Systems and Their Importance to the Document Analyst*.

<sup>17</sup> Plamondon, R., Srihari, S. (2000). *Online and off-line handwriting recognition: a comprehensive survey*. IEEE Transactions on Pattern Analysis and Machine Intelligence Volume: 22, Issue:1, Jan; Srihari S.N., Srinivasan H., Chen S., Beal M.J. (2008). *Machine Learning for Signature Verification*. In: Marinai S., Fujisawa H. (eds) Machine Learning in Document Analysis and Recognition. Studies in Computational Intelligence, vol 90. Springer, Berlin, Heidelberg, p. 389.

<sup>18</sup> Cusack, C.T & Hargett, J.W. (1989). A Comparison Study of the Handwriting of Adolescents. *Forensic Science International*, 42(3):239-248.



**E. Arkansas election officials may fail to account for increased variation in signatures of voters with disabilities.**

45. Signatures are executed by means of neuromuscular coordination. A motor program developed in the brain signals the muscles to produce handwriting movements. Any disability, illness, or drug that affects neuromuscular coordination will influence the production of signatures. Various diseases that affect motor neurons and neurological pathways can affect the appearance of signatures of the afflicted individual.

46. Diseases such as Parkinson's and Alzheimer's may also affect signatures due to changes in motor control. Writers with these diseases tend to write much smaller (a condition known as micrographia), and this tendency may change depending on medication. Individuals who have lost use of their dominant hand, and must learn to write with their other hand will also exhibit wide variation in their handwriting. An example of such individuals are veterans who have been injured in war. The longer a person writes with a non-dominant hand, the more the quality of handwriting will improve. However, it will likely never appear completely normal and natural.<sup>19</sup>

47. It is highly likely that writers with disabilities will exhibit a wider range of variation in their signatures than might normally be seen in the signatures of a healthy, skilled writer. This increased variation will not only present a challenge to a trained FDE, but will present a near-impossible task to a layperson who has to compare one signature on a ballot with one signature on an application for a ballot, and make a determination of authenticity.

48. In Arkansas, signatures on absentee ballot applications are compared with one reference signature on file with election officials. For voters with disabilities, the lack of an

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<sup>19</sup> Lanners, B. (2018). A New-Dominant Hand: Training the Non-Dominant Hand to Perform the Complex Task of Handwriting. *Journal of the American Society of Questioned Document Examiners*, Volume 21, Number 2, pp. 13-28.

adequate number of specimen signatures to compare against will exacerbate the error rate. Evaluation of signatures executed by ill or disabled writers requires the evaluator to have wide experience with different types of signatures and accurate knowledge of the physical conditions of the individual as relates to their handwriting.<sup>20</sup>

**F. Arkansas elections officials also fail to account for the different signature styles and features, leading to erroneous rejections.**

49. One of the reasons that accurate signature comparison determinations prove difficult, even for a trained FDE, is that signatures are written in three different styles<sup>21</sup> as illustrated in Figure 5:

- Text-based: Nearly all the letters can be interpreted.



- Mixed: More than two, but not all, letters can be interpreted.



- Stylized: No letters can be interpreted.



<sup>20</sup> Hilton, O. (1969). Considerations of the writer's health in identifying signatures and detecting forgery. *Journal of Forensic Sciences*, Vol. 14, No. 2, pp. 157-166.

<sup>21</sup> Mohammed, L., Found, B., Rogers, D. (2008). Frequency of signature styles in San Diego County. *Journal of the American Society of Questioned Document Examiners*, Vol. 11, No. 1.

**Figure 5** *Examples of three signature styles.*

These signature styles exhibit significantly different characteristics that impact the signature-matching analysis, and by extension, the determination of whether signatures are genuine. For example, kinematic features of signatures, such as size, velocity, changes of acceleration, and pen pressure are important in determining whether a signature is genuine. Yet these kinematic features vary between the same individual's signatures, with the degree of variation often dependent on the signature style. The kinematic features of stylized signatures, for example, vary more significantly than the kinematic features of text-based signatures. And the less legible a signature becomes, the more the election official depends on their pattern recognition ability. Thus, signature styles can have an impact on the determination of genuineness or non-genuineness. Unfamiliarity with the different signature styles may impact a reviewer's ability to determine whether two signatures come from the same person, and would likely cause a lay person (such as an election official) to decide that the compared signatures exhibit "differences" when the changes in features are simply "variations."

50. To determine whether signatures are made by the same individual, a reviewer should focus on holistic features of signatures, such as alignment, slant, pen lifts, rhythm, the size of writing, the slope or slant of the letters, or other characteristics that are diagnostic of the process used to create signatures. These features are subtle, and a writer is usually unaware of the features, as they are executed by the writer's subconscious motor program. These subtle features provide significant evidence of genuineness because they occur in natural handwriting. Lay persons, however, often focus instead on more eye-catching features in evaluating signatures. For example, an eye-tracking study on signature examination found that "lay participants focused to a greater

extent on individual features such as arches, eyelets, hooks, shoulders, connections, troughs, or other individual features” that catch the eye, and “appear[ed] less likely to use holistic features” when evaluating signatures.<sup>22</sup> Focusing on these eye-catching features is problematic because these are the types of features that a simulator would try to capture. Therefore, if the absentee ballot application signatures and the specimen signatures are pictorially similar, the election official may improperly accept the application signatures based on the similarities in eye-catching features without realizing that the signatures are good simulations. A trained FDE should be able to detect subtle features that are indicative of simulation. Properly utilizing the subtle, holistic features of signatures to determine genuineness, however, requires both training and adequate time for review.

**G. Arkansas election officials are not tested for form blindness, increasing the risk of erroneous signature match determinations.**

51. A laypersons’ ability to make consistently correct determinations as to the genuineness of a signature may also be impacted by a condition known as “form blindness,” which impairs “the ability to see minute differences in angles, forms, and sizes.”<sup>23</sup> Most ophthalmologists agree that form perception is not an eye problem but rather a translational problem. That is, “it is a perceptual inability to distinguish the small differences between shapes, colors, and patterns.”<sup>24</sup> Therefore, in most cases, form blindness goes undetected, but diminishes a reviewer’s ability to make accurate

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<sup>22</sup> Merlino, *supra* note 10.

<sup>23</sup> Bertram, D. (2009). Univ. of S. Miss. *Form Blindness Testing: Assessing the Ability to Perform Latent Print Examination by Traditional Versus Nontraditional Students* Dissertations. 996, p. 33; Byrd, J. & Bertram, D. (2003). Form-Blindness. *Journal of Forensic Identification*, 53(3):315-341.

<sup>24</sup> Moody, Meredith G., “*Form-Blindness and Its Implications: A Verification Study*” (2016); Honors Theses; Paper 388.

determinations of a signature's genuineness.<sup>25</sup> The problem of form-blindness is discussed in detail in Chapter 24 of *Questioned Document Problems*,<sup>26</sup> and while FDEs must pass a form blindness test before being trained in handwriting identification, Arkansas requires no such test for election officials. There is a risk that some election officials have form blindness, and which would make them particularly prone to making erroneous signature judgments.

**H. Even trained FDEs are likely to make erroneous signature comparison determinations under Arkansas's signature matching procedures.**

52. Even for trained FDEs, Arkansas's signature matching process would be prone to erroneous determinations due to the limited number of comparison signatures and the lack of proper equipment.

53. Normally, FDEs require multiple specimen signatures for comparison with a questioned signature, and often more if issues such as age or illness are involved. These specimens are required to adequately determine the range of variation of the writer and properly account for the reasons for variation within an individual's signatures discussed above. Indeed, nobody signs the same way twice: no two complex, skillfully written, genuine signatures of one writer have ever been found to be exactly alike, but such a statement should be understood to be true speaking microscopically, and not as the carpenter measures.<sup>27</sup> Inadequate standards, or failure to use

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<sup>25</sup> *Id.*, p. 32.

<sup>26</sup> Osborn, A.S. (1946). *Questioned Document Problems. The Discovery and Proof of the Facts*, 2nd. Ed. Boyd Printing Company: Albany, NY. Pp. 218-250.

<sup>27</sup> Osborn, A. (1910). *Questioned Documents*. The Lawyers' Publishing Co.: Rochester, NY, p. 281.

adequate specimens fully representing the range of variation in a writer's signature, is a well-known source of error.<sup>28</sup>

54. Features observed in the questioned signature(s) may not be observed in inadequate specimens. This may lead to an erroneous interpretation of a feature as a difference (two writers) not a variation (one writer). Because Arkansas election officials are only required to compare the signature on the absentee ballot application with one reference signature on file, they cannot distinguish accurately between features, variations, or differences. Furthermore, Arkansas election officials may need to compare a voter's original "wet-ink" signature on the voter registration application record with the voter's absentee ballot application signature which may be sent by electronic means. Ark. Code Ann. § 7-5-404(a)(1)(B) provides that an absentee ballot application "sent by electronic means . . . must bear a verifiable facsimile of the applicant's signature," and Ark. Code Ann. § 7-5-404(a)(3)(A)(vi)(b) provides that an "application sent by electronic means will be accepted only upon verification of the facsimile signature of the applicant by the county clerk."

55. Comparing a digitized signature with an original "wet-ink" signature has many inherent limitations, some of which are caused by the resolution of the digitized signature, whether the digitized signature is being viewed on a monitor or as a printed item, and the writing instruments used for each signature. If the monitor's resolution is low, or if the digitized signature is a poor copy of the original signature to begin with, this would make it very difficult for an untrained examiner to assess the line quality of the signature. Striations made by ballpoint pens may appear to be gaps in the writing line, and may be interpreted mistakenly as evidence of simulation or

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<sup>28</sup> Huber, R.A. & Headrick, A.M. (1999). *Handwriting Identification: Facts and Fundamentals*. Boca Raton, FL: CRC Press.

forgery. One study found that trained FDEs had similar error rates in evaluating the authenticity of electronic signatures when compared with signatures written with a ballpoint pen as they did in studies when comparing only “wet ink” signatures.<sup>29</sup> It follows that the error rates for untrained election officials will be similar or greater than the errors found in studies cited above for laypersons comparing only “wet ink” signatures.

56. As discussed above, Arkansas does not require election officials to use or be provided with proper equipment to conduct signature comparisons, such as magnification and lighting equipment. “[T]he microscope is the instrument which makes it possible to see physical evidence directly that otherwise may be invisible.”<sup>30</sup> Without this type of equipment, even a well-trained eye may make errors in a signature authenticity determination.

57. Finally, wrongful rejections by lay election officials are likely to be repeated if the voter applies for a new ballot. Changes in medication for example, may continue to change the pictorial aspect of the voter’s signature such that it looks different from the reference sample.

## V. CONCLUSION

58. For the reasons stated herein, it is my professional opinion that Arkansas election officials will inevitably make erroneous signature match determinations when reviewing absentee ballot application. In particular, Arkansas election officials are significantly more likely to erroneously conclude that authentic signatures are *not* genuine than they are to make the opposite error—to accept inauthentic signatures as genuine. These erroneous determinations result from the

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<sup>29</sup> Heckerroth, J. & Boywitt, C.D. (2017). Examining Authenticity: An Initial Exploration of the Suitability of Handwritten Electronic Signatures. *Forensic Science International*, 275, 144–154.

<sup>30</sup> Osborn, A. S. (1929). *Questioned Documents*. 2nd. Ed. Boyd Printing Company, Albany, N.Y., USA.

inherent difficulty in making reliable signature authenticity determinations, particularly where, as here, the reviewer lacks training, is provided with an insufficient number of comparison signatures, and does not have access to proper equipment. The use of one voter registration application record signature as the sole reference sample for comparison with one absentee ballot application signature will most likely exacerbate the error rate. In this context, Arkansas's signature matching procedures are all but guaranteed to result in the erroneous rejection of properly completed absentee ballot applications.

\* \* \*

*Linton Mohammed*

Linton Mohammed, Ph.D, D-ABFDE

Broward County, FL  
Jurat

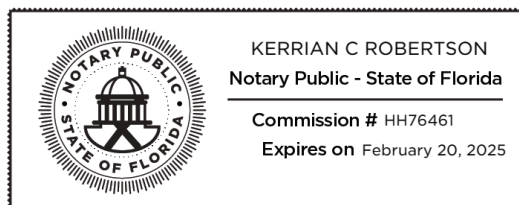
Sworn to before me this 12th day of November 2021.

Linton Mohammed DRIVER LICENSE

*Kerrian C Robertson*

Kerrian C Robertson

Notary Public



My commission expires 02/20/2025

Notarized online using audio-video communication