

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 O - EE**

\*Administrative Order No 2.

(g) *File Mark*. (1) There shall be a two inch (2") top margin on the first page of each document submitted for filing to accommodate the court's file mark. If the pleading or document must be filed in multi-parts because of size or for other reasons, the first page of each part must include the file name and file mark and shall clearly indicate the part number and number of parts (example, part 1 of 2).

(2) If a document is such that the first page cannot be drafted to provide sufficient space to satisfy the file-mark requirement, the document must include the uniform cover page developed by the Administrative Office of the Courts and found under Forms and Publications at [www.arcourts.gov](http://www.arcourts.gov).

# EXHIBIT O

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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.

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18 VIDEOCONFERENCE DEPOSITION OF SUSAN INMAN  
19 TAKEN ON BEHALF OF THE DEFENDANTS  
20 ON DECEMBER 13, 2021, BEGINNING AT 1:07 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 Alexi Velez  
29 ELIAS LAW GROUP  
30 10 G. Street, N.E., Suite 600  
31 Washington, D.C. 20002  
32 202-968-4490  
33 avelez@elias.law

34

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1     so tell me what you mean by that.

2           A     Okay. Well, the county clerk's office delivers  
3     the sealed ballot box of absentee ballots to the election  
4     commission, that sealed the box is opened. There's a  
5     process under state law that explains for each envelope to  
6     be opened two election officials will be present. Every  
7     envelope is dealt with by two election officials. They  
8     open the outer envelope. Election worker number one will  
9     call out the name of the voter, it will be recorded on a  
10    form by the voter sitting across the table or next to them  
11    and they will identify that all items are present, like  
12    the ID, the voter statement, the sealed ballot envelope,  
13    and if all is proper, then that ballot is to be counted.  
14    If something is improper, then it will go into an  
15    irregular box to be dealt with by the county board. So  
16    this process can occur up to a week before election day  
17    depending on the volume.

18           Q     Well, the volume -- if the volume is high, let's  
19    say it's the federal election, that's actually a good  
20    thing that you get at least a week to start opening those  
21    absentees and figuring out if everything's in there for  
22    these poll workers, wouldn't you agree?

23           A     I totally agree.

24           Q     I mean, if everything came in on the Monday  
25    before election, if all the absentee ballots came in on

1 the Monday before election for a federal election, would  
2 you agree that would be chaotic to get that process you  
3 just described done?

4 A It would definitely be chaotic.

5 Q So, you know, they have now changed the law that  
6 says if you're going to drop off your absentee ballot or  
7 have a third-party do it, that's got to be done the Friday  
8 before the election?

9 A Correct.

10 Q Can you see how that prevents poll workers,  
11 these people you were just talking about who looked  
12 through these absentee things up to a week before, can you  
13 see how that prevents them from being inundated all at  
14 once with drop-off ballots and mail-in ballots the Monday  
15 before the election?

16 A No.

17 Q Why? You just told me --

18 A Because --

19 Q Wait, let me finish. You just told me -- I did  
20 ask why and so let me apologize. You just told me that if  
21 all the absentee ballots came in the Monday before the  
22 election it could be chaotic in a federal election. Would  
23 you agree that's what you said?

24 A That's not what I said. Well, I did --

25 Q What did you say?

1           A     No, your question to me was what if that was the  
2     only time they could come in to begin being processed.

3           Q     Okay. So let's say everybody waits until the  
4     last minute and sends all the absentee ballots in at one  
5     time and you said that event would be chaotic if it was  
6     all the absentee ballots coming in the Monday before the  
7     election, correct? Is that what you were saying?

8           A     Well, you're kind of putting a hypothetical out  
9     there for me, but I was saying that if -- and if that were  
10    the fact, if that were the time when they all came in,  
11    they would have to get a larger crew of election workers  
12    hired to deal with it.

13          Q     And that might work in Pulaski County, is that  
14    going to work in Fulton County?

15          A     Fulton County would probably not have that  
16    problem.

17          Q     Is that going to work in Washington County?

18          A     I think they would manage it like Pulaski does  
19    and hire more workers to do the canvass.

20          Q     So you don't think that making sure that all  
21    dropped off absentee ballots come in the Friday before  
22    could make organization easier for poll workers?

23          A     I do not.

24          Q     Okay. But why don't you?

25          A     Because we have always managed it in the past.

1           Q     You might have to hire new workers, more  
2 workers, but you can manage is what your point is?

3           A     Absolutely.

4           Q     Okay. That wasn't my question of whether you  
5 managed it or not. I understand you managed it. But  
6 staggering when things come in you don't think is a facet  
7 or has some connection to organization?

8           A     I think the process is quite organized and the  
9 workers in charge of doing the canvass and managing that  
10 effort are well trained and able to handle it.

11          Q     So remember when I asked you about the elections  
12 clause earlier?

13          A     Uh-huh, yes.

14          Q     And I said that -- it says the state  
15 legislatures have the authority to prescribe time, manner  
16 and place of elections. That's what I said. I'm not  
17 asking you a question right now. Would you agree that a  
18 law that says drop-off absentee ballots have to be dropped  
19 off the Friday before the election would relate to time,  
20 place and manner of elections?

21               MS. FRENKEL: Objection, calls for a legal  
22 conclusion.

23          Q     (BY MR. MOSLEY) You still answer, Ms. Inman.

24          A     Shall I answer?

25               MS. FRENKEL: Go ahead.

# EXHIBIT P

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# STATE BOARD OF ELECTION COMMISSIONERS

501 Woodlane Street – Suite 122 South  
Little Rock, Arkansas 72201  
(501) 682-1834 or (800) 411-6996

Secretary of State  
**John Thurston**  
Chairman

**Wendy Brandon**  
**Sharon Brooks**  
**Jamie Clemmer**  
**Bilenda Harris-Ritter**  
**William Luther**  
**J. Harmon Smith**  
Commissioners



**Daniel J. Shults**  
Director

**Chris Madison**  
Legal Counsel

**Jon Davidson**  
Educational Services Manager

**Tena Arnold**  
Business Operations Manager

January 11, 2022

The Hon. Veronica Smith-Creer  
City of El Dorado Mayor  
204 North West Avenue  
PO Box 2170  
El Dorado, AR 71730

## DOCKET NO. SBEC 2020-044 NOTICE OF FINAL ACTION AND LETTER OF INSTRUCTION

Mayor Smith-Creer:

The State Board of Election Commissioners has concluded the investigation from the complaint filed regarding the Union County November 3, 2020, General Election. That investigation is complete, and no violation of election law was proved; however, the SBEC Board does find it appropriate to issue this Letter of Instruction regarding two of the allegations and to refer this to the prosecutor for the 13<sup>th</sup> Judicial District to review the allegations to determine if a criminal violation occurred.

The allegations were two-fold. First, you were allegedly engaging with voters waiting in line to vote and advocating directly to those voters which candidate and issues to vote for and how to vote. You have denied that allegation and, because both your statement and the statement of the witnesses are contradictory, the SBEC was unable to find sufficient evidence to tip the scales in favor of either account of the incident in question. However, your videos from the time period in question do prove you were present in and around the polling location at time the allegations were made; however, there was discrepancy as to the exact time the alleged incident occurred. Because of the conflicting evidence, the SBEC finds it appropriate to dismiss the complaint, but to issue this Letter of Instruction regarding

conduct in and around the polling location and the appearance of electioneering when speaking with voters waiting in line to vote.

The Board brings to your attention that electioneering is prohibited inside a voting location within the 100-foot exclusionary zone and with a person standing in line to vote. Thus, the protection from electioneering starts within the polling location, extends outward from the primary entrance for the 100-foot exclusionary zone, and if the line of voters extends beyond the 100-foot zone, then to those waiting in line to vote. Thus, engaging in even innocent conversation with voters waiting in line to vote may create the appearance of electioneering. While it is understandable that brief conversations may occur from time to time, when a person actively campaigns for or against a candidate or for or against an issue on the ballot and then engages in extended conversation in close proximity to a voter standing in line to vote, the appearance of electioneering exists. Thus, to avoid the potential for misunderstanding and creating the appearance of electioneering, it is advisable to refrain from one-on-one conversations with voters standing in line to vote. While the evidence was inconclusive because of the sworn allegation and your sworn denial, your presence within the 100-foot exclusionary zone created the appearance of electioneering.

Furthermore, the Board wishes to bring to your attention Act 728 of 2021 which specifically prohibits your broadcasting Facebook live videos regarding the election within the 100-foot exclusionary zone. Act 728 prohibits a person from loitering within the 100-foot zone, and requires that any person in that zone be either entering (i.e. going into the building to vote, or waiting in line to vote) or egressing the polling location. Similarly, if the polling location is near other businesses or buildings that serve other purposes, a person may transit the 100-foot exclusionary zone to enter or exit the other business or building. However, the person may not loiter in the zone and engage in conversation with voters waiting in line to vote. While your videos were about the length of the line and the speed to which voters were being processed, under Act 728 of 2021, if you make that same video in future elections, you could be found as violating that prohibition. You are more than welcome to make such videos and provide such information to voters outside the 100-foot exclusionary zone.

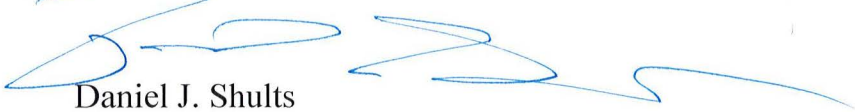
The Board thanks you and recognizes the substantial responsibility you have accepted to serve your community. A Letter of Instruction is advisory in nature and should be considered as informational regarding legal compliance with election law. Further, because of the conflicting statements, the Board finds it appropriate to refer the complaint, the report, and its supporting documents to the Prosecutor for the 13<sup>th</sup> Judicial District for independent review. Please note that it is the Board's duty to enforce election law and that if, in future elections, the Board concludes an individual has violated election law, the Board will take appropriate corrective action as necessary.

This Letter of Instruction serves as notice of the State Board's final action and the reasons for such action. Consequently, this matter is now closed as to the SBEC's procedures.

This letter is a public document and the SBEC will send a copy of this letter to the Complainants to inform them of the outcome of this complaint.

If you have any further questions or concerns about the content of this letter or the underlying complaints, please feel free to contact our office at your convenience.

Sincerely,



Daniel J. Shults  
Director

cc: Cliff Wright, Greg Harrison, Kelli Harrison, Heather Crisalli, Valerie Mullins,  
H.P. Reynolds, - Complainants

Enclosure: SBEC 2020-044 Complaints  
SBEC 2020-044 Staff Report  
SBEC 2020-044 Investigation Report

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# EXHIBIT Q

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VIDEO FILE BATES NUMBERED: PL037504  
ARKANSAS STATE LEGISLATURE  
93RD GENERAL ASSEMBLY - REGULAR SESSION, 2021  
HOUSE COMMITTEE ON STATE AGENCIES AND GOVERNMENT  
AFFAIRS

MONDAY, APRIL 12, 2021

9:30 A.M.

ROOM 151, STATE CAPITOL

LITTLE ROCK, ARKANSAS

SOURCE: A TRUE AND CORRECT COPY OF THIS VIDEO IS  
AVAILABLE AT:

[HTTPS://WWW.ARKLEG.STATE.AR.US/COMMITTEES/MEETINGSAST  
?CODE=900&DDBIENNIUMSESSION=2021%2F2021R](https://www.arkleg.state.ar.us/committees/meetingspast?CODE=900&DDBIENNIUMSESSION=2021%2F2021R)

TRANSCRIBED BY: Abby Rhodes, CSR, RPR

1 committee? Representative Ladyman has a motion of a  
2 do pass. Any discussion on the motion? Seeing none,  
3 all in favor, say "aye."

4 COMMITTEE MEMBERS: Aye.

5 REPRESENTATIVE TOSH: All opposed, say "no."  
6 Congratulations, Mr. Hammer. Your bill has  
7 passed.

8 SENATOR HAMMER: Thank you, Mr. Chair. Do  
9 you want me to be excused or...

10 REPRESENTATIVE TOSH: You've got one more?

11 SENATOR HAMMER: I do.

12 REPRESENTATIVE TOSH: Is that going to be  
13 Senate Bill 486?

14 SENATOR HAMMER: It would be.

15 REPRESENTATIVE TOSH: Yes, sir, go ahead.  
16 You're recognized to present it.

17 SENATOR HAMMER: Thank you, Mr. Chair. This  
18 bill is pretty simple in the intent of what it's  
19 intended to do. It establishes a hundred-foot  
20 perimeter around the exterior entrance to the building  
21 where voting is taking place except for persons  
22 entering or leaving the building where voting is  
23 taking place for lawful purposes.

24 We as politicians have to maintain a  
25 hundred-foot safe zone entering into the main

1 entrance. This extends to any other groups that may  
2 be within the hundred-foot zone. We've had examples  
3 of individuals all the way from down to Senator  
4 Gardner's district up here to central Arkansas  
5 district where entities were camped out inside the  
6 hundred-foot zone and were handing out -- and they  
7 were handing out bottled waters and other things.  
8 Some were wearing T-shirts that identified the group  
9 that they were with and it's just the common opinion  
10 on this senator and the majority of the senators on  
11 the other end that that hundred-foot zone ought to be  
12 considered sacred for all purposes and nobody camping  
13 out inside that and free movement.

14 The reason we put "lawful purposes" in there  
15 is a lot of our voting places are public buildings  
16 like libraries. We want the ingress and egress in and  
17 out to flow smoothly so we wouldn't want the librarian  
18 or somebody returning a book to be targeted, to be  
19 arrested because they're in the hundred-foot zone, but  
20 that's an example of why we put that language in  
21 there, to make sure that we would protect everybody  
22 that has lawful business to be there at that  
23 establishment.

24 That could also apply to church members  
25 maybe that are coming in and out of their churches

# EXHIBIT R

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IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
FIFTH DIVISION

THE LEAGUE OF WOMEN VOTERS )  
OF ARKANSAS, et al., )  
)  
Plaintiffs, )  
)  
vs. ) Case No.  
) 60CV-21-3138  
JOHN THURSTON, et al., )  
)  
Defendants. ) Volume II  
)

Continued videoconference deposition of  
ROBERT STEIN, Ph.D., Volume II, taken remotely in  
the above-captioned cause, before Rachel F. Gard, CSR,  
RPR, CLR, CRR, commencing at the hour of 12:32 p.m.  
Central on Tuesday, January 18, 2022.

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

1 identified as being there lawfully, Act 728  
2 prohibits anybody else from being within 100 feet of  
3 a polling location?

4 A. That's my understanding.

5 Q. So you would agree with me, then, that  
6 somebody who is not a voter, election administrator,  
7 poll watcher, police officer, or security who was  
8 within 100 feet of a polling location to hand out  
9 water or snacks to voters, that person would be  
10 there unlawfully under Act 728?

11 A. That is my understanding.

12 Q. In other words, Act 728 would prohibit  
13 people from handing out water or snacks to people  
14 waiting in line within 100 feet of the polling  
15 location?

16 A. My understanding, and again don't --  
17 specifically there are people who are lawfully  
18 able to be within 100 feet. I didn't recall that  
19 the actions they engage in, handing out water and  
20 food, would prohibit him but rather if they  
21 weren't a voter, poll worker, et cetera, they  
22 couldn't be within 100 feet.

1 Q. Right. They couldn't be within 100 feet.  
2 They couldn't be just standing there doing nothing.  
3 They couldn't be standing there handing out water,  
4 they couldn't be standing there handing out snacks,  
5 et cetera, unless they were a voter, election  
6 worker, poll watcher, police officer, or security;  
7 that's your understanding?

8 A. That's my understanding

9 MR. MOSLEY: Objection to form. Misquoting  
10 the witness.

11 Q. Now, do you -- Dr. Stein, do you think  
12 that there's any value served to the people waiting  
13 in line by having things like water or snacks made  
14 available to them while they're waiting?

15 A. You know, in this case, I hadn't formed  
16 an opinion. But I think it would be -- you know,  
17 one might say amenities of that sort are of some  
18 value to some voters, yes.

19 Q. Okay. And to the extent they're of some  
20 value to some voters, would you agree with me that  
21 they would be of more value to voters who are in  
22 longer lines as compared to voters in shorter lines?

1     increase, customers are more likely to get  
2     frustrated. We talked about that, right? And the  
3     leave the lines. And you said this research has  
4     obvious negative consequences in a retail setting  
5     and even more troubling consequences, if true, in a  
6     voting setting. Right?

7             A.     That's correct.

8             Q.     And my question to you is: Do you believe  
9     that those consequences are true in a voting setting  
10    because you have this qualification here in your  
11    paper?

12            A.     Yes, I do.

13            Q.     Okay. And then you go on to say that  
14    waiting to vote has also been found to be  
15    substantially longer for racial and ethnic  
16    minorities. That's accurate, correct?

17            A.     That's correct.

18            Q.     And for low-income voters, correct?

19            A.     That's correct.

20            Q.     And that waiting to vote, the fact that  
21    it's -- that the wait times are longer for racial  
22    and ethnic minorities and low-income voters, that

# EXHIBIT S

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## Arkansas session rolls out array of vote laws

Changes hailed by some as protective, reviled by others as added restrictions

by Rachel Herzog | May 9, 2021 at 11:14 a.m.

Follow



Kristi Stahr (left) answers a question as Sen. Kim Hammer (right), R-Benton, listens while presenting a series of bills amending election laws during the Senate State Agencies Committee on Tuesday, March 30, 2021, at the state Capitol in Little Rock. (Arkansas Democrat-Gazette/Thomas Mettler)

Arkansas enacted more than 20 laws on elections and voting during the 2021 legislative session, including measures on absentee voting, election complaints and other changes.

While some bills weren't controversial or had bipartisan support, many Republican-backed bills have been decried by civil-rights groups as efforts to limit people's access to the ballot. Proponents of those laws say they're about ensuring election integrity.

"We clearly see this as voter suppression, chipping away at access to the ballot, and the modern-day poll tax," Kymara Seals, policy director at the Arkansas Public Policy Panel, said in an interview Friday.




At least a dozen bills were the product of an ad hoc committee that included Pulaski County Election Chairwoman Kristi Stahr and Republican lawmakers, most of whom were from Pulaski County, Stahr said in an interview Wednesday.

"I think it's going to bring a greater confidence of the voters," Sen. Kim Hammer, R-Benton, said.

More than 350 voting bills have been introduced this year in dozens of states, according to the Brennan Center for Justice, a public policy think tank.

### New voting laws in Arkansas

State legislators approved more than 20 laws on elections and voting during the 2021 legislative session. Unless otherwise stated in the law itself, bills passed in the 2021 legislative session take effect in late July. Scroll or use the search bar to view details on each bill.

 House bill  Senate bill  Referred to voters

 Search in table

Page 1 of 2 >

Bill	Act	Lead Sponsor	Topic	What does it do?	What's the current law?
HB1112	Act 249	Rep. Mark Lowery, R-Maumelle	Voting	Requires voters to present ID cards or appropriate documentation to vote.	Voters could bypass the ID requirement by signing a sworn statement.
SB486	Act 728	Sen. Kim Hammer, R-Benton	Voting	Bars people from entering or remaining in an area within 100 feet of the entrance to a voting site while voting is taking place, except a person entering or leaving the building for	Electioneering within 100 feet of a polling place is a misdemeanor.
SB496	Act 610	Sen. Jason Rapert, R-Conway	Voting	Allows special elections to be scheduled once a quarter.	Special elections can be scheduled any month of the year.
HB1568	Act 421	Rep. Stephen Meeks, R-Greenbrier	Technology	Mandates that legislative committees shall conduct a study on election technology.	Current state law does not include this mandate.

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Police: Man, 21, injured in shooting at Jacksonville apartment complex

Arkansas women cruise past Tarleton State in season opener

Arkansas Supreme Court mandate spurs Racing Commission to meet on Pope County casino license

After I-40 bridge closure, Arkansas highway department to change inspection program leadership, procedures

### URL

<https://proofpointisolation.com/browser?url=https%3A%2F%2Fwww.arkansasonline.com%2Fnews%2F2021%2Fmay%2F09%2Fsession-rolls-out-array-of-vote-laws%2F>

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Thu Nov 11 2021 07:53:16 GMT-0800 (Pacific Standard Time)

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HB1566	Act 421	Rep. Stephen Meeks, R-Greenbrier	Technology	legislative committees shall conduct a study on election technology.	Current state law does not include this mandate.
HB1202	Act 128	Rep. Andrew Collins, D-Little Rock	Technology	Requires counties to post copies of sample ballots on the Secretary of State's website.	This isn't currently required under state law.
HB1803	Act 756	Rep. Mark Lowery, R-Maumelle	Election issues, complaints	Gives the state Board of Election Commissioners the authority to institute corrective actions in response to complaints.	The state Board of Election Commissioners has the power to investigate alleged violations, render findings and impose sanctions.
HB1803	Act 756	Rep. Mark Lowery, R-Maumelle	Election issues, complaints	Allows the state Board of Election Commissioners to hear complaints about alleged violations of	The state Board of Election Commissioners may hear complaints about alleged violations of voter registration laws.
HB1803	Act 756	Rep. Mark Lowery, R-Maumelle	Election issues, complaints	Says a subpoena from the state Board of Election Commissioners may direct any county law enforcement officer of the county concerned or the Director of the Division of Arkansas State Police to seize any public record that is withheld.	The state Board of Election Commissioners has subpoena power, but power to direct law enforcement agencies not specified.
HB1803	Act 756	Rep. Mark Lowery, R-Maumelle	Election issues, complaints	Allows the state Board of Election Commissioners to make expenditures and order payment of the costs of the investigation and hearing.	The state Board of Election Commissioners may order the payment of the costs of the investigation and hearing.
SB644	Act 974	Sen. Kim Hammer, R-Benton	Election issues, complaints	Bars a person convicted of a misdemeanor offense related to violating election law from serving as an election official in future elections.	People charged with misdemeanors related to violating election law are ineligible for state office or employment, but not barred from working as an election official.
SB644	Act 974	Sen. Kim Hammer, R-Benton	Election issues, complaints	Gives the Legislature's Joint Performance Review Committee the ability to refer election law violations to the state Board of Election Commissioners.	There's not currently an avenue for a legislative committee to refer election law violations.
SB644	Act 974	Sen. Kim Hammer, R-Benton	Election issues, complaints	Allows the state Board of Election Commissioners to decertify an election official if it finds a violation of laws under its jurisdiction.	The state board has the power to issue public warning, impose fines, report information to law enforcement, order payment of costs of the investigation and hearing, or combine any of the sanctions.
SB644	Act 974	Sen. Kim Hammer, R-Benton	Election issues, complaints	Requires that public notices of elections include information about the availability of the Attorney General's election law violation hotline, in addition to general information about fraud and misrepresentation.	Public notices of elections shall include general information on federal and state laws regarding prohibitions on acts of fraud and misrepresentation.
SB644	Act 974	Sen. Kim Hammer, R-Benton	Election issues, complaints	Gives the Legislature's Joint Performance Review Committee authority to investigate allegations of election law referred by the Attorney General's office.	The committee's responsibilities currently include performance reviews of governmental programs and agencies and investigating problems in state government.
HB1522	Act 416	Rep. David Ray, R-Maumelle	Election issues, complaints	Creates a misdemeanor offense for false statements by candidates.	This isn't currently prohibited under state law.
SB498	Act 952	Sen. Mark Johnson, R-Ferndale	Election issues, complaints	Requires that election complaints be sent to the state Board of Election Commissioners for evaluation.	Election complaints are sent to the appropriate county clerk and prosecuting attorney.
				Gives county	

#### URL

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				<p>         COUNTY CLERKS FOR          EVALUATION.       </p>	<p>         prosecuting attorney.       </p>
SB557	Act 950	Sen. Mark Johnson, R-Ferndale	County election commissions	<p>         Gives county election boards the power to supervise all election officials and states that county employees detailed as election officials must comply with the county board's directives in election matters.       </p>	<p>         Election commissions have the statutory power to run elections.       </p>
SB582	Act 1051	Sen. Kim Hammer, R-Benton	County election commissions	<p>         Specifies how county election commissioners shall take the oath of office.       </p>	<p>         This isn't currently specified under state law.       </p>
SB549	Act 1022	Sen. Alan Clark, R-Lonsdale	County election commissions	<p>         Requires county election boards to prepare reports on provisional and absentee ballots.       </p>	<p>         This isn't currently required under state law.       </p>
				<p>         Gives county election       </p>	<p>         Current state law is inconsistent, in some places in code       </p>

[\[Guide not showing up above? Click here to see it: arkansasonline.com/59arkvote/\]](#)

### ABSENTEE VOTING

Several provisions in the new laws could make it more difficult for some of Arkansas' absentee voters.

Senate Bill 643, now Act 973, requires that absentee ballots be submitted in person to the county clerk's office no later than the Friday before the day of the election. Under current law, those ballots must be turned in the Monday before an election. The new law doesn't change the deadline for mailed-in ballots, which is Election Day.

In two of the largest counties, Pulaski and Washington, more than 1,000 voters in each county turned in their ballots after what will be the new deadline, according to numbers provided by the clerks' offices.

Hammer, the bill's sponsor, said in a committee meeting last month that the bill's intent is to give more time for county clerk's offices to process the ballots and avoid errors.

Absentee voters who live overseas and military service members still have until 10 days after the election for their ballots to arrive by mail.

Holly Dickson, executive director of the American Civil Liberties Union of Arkansas, said in an email Wednesday that absentee voters are disenfranchised in every election for ballots not being returned by the current deadline, and the new law makes it harder for those voters to get their ballots in on time.

Lindsey French, legal counsel for the Association of Arkansas Counties, told a Senate committee last month that the Arkansas Association of County Clerks did not have an official position on the bill, but the majority of the group's members didn't have a problem with it.

Gov. Asa Hutchinson, a Republican, allowed the measure to become law without his signature. Hutchinson said in a written statement Friday that he did not sign the bill because it changes how the state has historically receives absentee ballots.

"This unnecessarily limits the opportunities for voters to cast their ballot prior to the election," Hutchinson said.

House Bill 1715, now Act 736, bans the distribution of unsolicited absentee ballots and ballot applications by county clerks and other designated election officials and makes the possession of more than four absentee ballots, rather than 10 as in current law, a rebuttable presumption of intent to defraud.

Several county clerks' offices told the Arkansas Democrat-Gazette that they did not send out unsolicited absentee ballots, though some organizations in the state sent out applications.

Rep. Mark Lowery, R-Maumelle, the bill's sponsor, said in an interview last month that HB1715 wouldn't ban those groups from sending applications to voters, but would prevent, for instance, a county clerk from sending applications only to areas where more voters of a certain political party live than others. He said he didn't know whether that was happening in the state.

"It would be an unequal and unfair manipulation of the process," he said.

Another part of HB1715 standardizes the requirement that a voter's signature on an absentee ballot be verified by checking the person's voter registration application. That standard exists in Arkansas law already but was inconsistent throughout state code, Stahr said, leading to the standard being applied unequally across the state.

Democratic lawmakers, who voted against the bill in both chambers, said they were concerned that the standard would disenfranchise people, particularly the elderly and people with disabilities, since the two signatures could be decades apart. Dickson said signature-matching provisions have the propensity to disenfranchise anyone but particularly suppress the vote of marginalized groups.

"People's handwriting changes over time, and elections officials comparing those signatures are not trained as handwriting specialists, among other issues," she said.

Stahr, who was formerly head of voter registration in Pulaski County, said voters can update the signature they have on file with the state anytime.

In Pulaski County, 591 absentee ballot applications had their signatures compared to a signature in a poll book or on an early-vote request sheet from the past two years. Under the new law, those applicants would have been sent a letter and a voter registration form to sign and return, Jason Kennedy, assistant chief deputy in the Pulaski County clerk's office, said in an email last week.

In the United States, absentee voting was more popular than ever in 2020, according to a study the Massachusetts Institute of Technology Election Data and Science Lab published in January that included data

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Massachusetts Institute of Technology Election Data and Science Lab published in January that included data going back to the 1990s. Nearly half of American voters cast ballots by mail in the 2020 election, compared with about 20% in 2016, according to a survey from the center.

The coronavirus pandemic significantly affected the ways in which people voted in 2020. Arkansas eased restrictions on why a person could vote absentee.

Last year, politics and polling website FiveThirtyEight ranked Arkansas in the second-to-lowest tier of the 50 states for ease of absentee voting, because the state doesn't automatically mail any ballot application materials to voters, and then voters must wait to be approved and receive ballots.

Last week, the governor of Florida signed into law a bill that tightens restrictions on absentee ballots, among other things, and lawmakers in Texas gave approval to a law that would include new limits on mail-in voting and increased penalties for voting irregularities. Both were Republican-sponsored measures.

### ELECTION COMPLAINTS

Other pieces of legislation passed this session create new avenues for governmental entities to respond to and refer election-related complaints.

House Bill 1803, now Act 756, gives the state Board of Election Commissioners the authority to institute corrective actions in response to complaints and expands the types of violations about which county election commissions can make complaints.

Senate Bill 644, now Act 974, creates a process by which the Legislature can review election issues through its Joint Performance Review Committee.

Hammer said the Legislature's hands are often tied, because they hear complaints about elections from constituents but don't have a way to respond.

Hutchinson said he allowed the bill to become law without his signature because it amounts to a "takeover in the review of all elections" by the committee.

"This bill goes too far. The Legislature should not be investigating municipal and county elections. The General Assembly has jurisdiction to review the election of its own members but reviewing all elections is an intrusion on local governance," the governor wrote.

Senate Bill 498, now Act 952, requires that complaints made to county election boards about alleged election law violations be sent to the state Board of Election Commissioners, rather than to county clerks or local prosecutors.

The appropriation for the state Board of Election Commissioners for fiscal 2022, which totals almost \$1.1 million, includes funding for three new employees.

Board Director Daniel Shults said the agency asked for the new employees as a result of several laws that increase the duties of the state board, including a provision that requires additional training for election officials.

Shults said the state board didn't take a position on any of the bills from the 2021 session except for the legislation the agency proposed that is now Act 610, which allows special elections to be scheduled once a quarter.

"Ultimately, I think I can say that more oversight of the election process is also a good thing," Shults said.

He said the state board has not yet concluded any investigations into complaints from the 2020 election. Several investigations are ongoing, he said.

Opponents of the bills say they're unnecessary and fall in line with a far-right national narrative pushed by supporters of former President Donald Trump that he was robbed of a second term.

"We were assured that there was no voter fraud due to countless recounting of votes in the state of Georgia and other areas," Dianne Curry, president of the Little Rock NAACP, said in a written statement Friday, likening the bills to Jim Crow laws that limit access to the ballot for Black voters.

Three instances of voter fraud have been documented in Arkansas since 2002, according to a database from the conservative Heritage Foundation.

Supporters of the bills have suggested that local prosecutors don't act unless the activity influenced the result of an election.

"I think there's a history in Arkansas of prosecutors not taking seriously complaints about elections, about fraud," Hammer said, adding that the measures are "proactive to make sure that our election system is the most secure and of the highest integrity."

### 100-FOOT ZONE

A restriction on voting sites enacted in Arkansas has drawn comparisons to a part of Georgia's new voting law, a 98-page measure that sparked anger and boycotts in that state.

Senate Bill 486, now Act 728, would bar people from entering or remaining in an area within 100 feet of the entrance to a voting site while voting is taking place except for a person entering or leaving the building for "lawful purposes."

The bill's proponents and detractors disagree on whether it would allow someone to give a bottle of water to a voter waiting in line. The Georgia law specifically bans giving any food or drink to a voter within 150 feet of a polling place.

Stahr said Arkansas' law wouldn't prohibit that and the intent is to target loitering. Lorrie Evans, an organizer for voter-education group Indivisible Little Rock and Central Arkansas, said in a committee meeting last month that she didn't think that activity was clearly protected and would bar "good Samaritans" from thanking people for voting.

Republican lawmakers who supported the bill said they saw nonpartisan groups campaign at polling sites under the guise of voter education.

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Republican lawmakers who supported the bill said they saw nonpartisan groups campaign at polling sites under the guise of voter education.

Seals of the Arkansas Public Policy Panel said the legislation was "mean-spirited."

Janine Parry, a political science professor at the University of Arkansas, Fayetteville, said SB486 would only make it harder to vote if people were standing in line.

"So if we see more record-high turnout elections, and there are signs that we will, then it could make a difference. That one, to me, seems more symbolic than some of the other ones because it's not a frequent occurrence in Arkansas politics," Parry said.

#### OVERALL IMPACT

Parry said the laws passed in Arkansas are newer types of voting-related provisions, and it usually takes a few years for researchers to cross-check across states and figure out what effect certain laws have on voter turnout.

Efforts over the past three decades to roll back changes from 100 years ago that made it harder for people to vote overall have had a modest impact, increasing turnout by a few points, she said.

Parry said laws like House Bill 1112, now Act 249, which strikes from state law a provision that allowed people to vote without ID if they signed a sworn statement and would affect a few thousand voters in Pulaski County, likely wouldn't make a difference in election outcomes.

But poll workers and others who care about the experiences of individual voters are concerned about the chance of something causing a first-time or less-experienced voter to be turned away or have a negative experience and becoming less likely to exercise that right in the future, Parry said.

The ACLU of Arkansas was not able to provide a complete analysis of the bills or any of them individually as of last week, though Dickson has said election bills in the state will make it harder for people of all political stripes to vote.

Lawmakers behind the bills said they were responding to specific local issues or being proactive, and said protests from advocacy groups that the laws would prevent people from voting weren't true.

"I don't think there's any evidence to show that that is what's going to happen," Lowery said.

When speaking in opposition to HB1715 and HB1803 in the House last month, Rep. Fred Love, D-Little Rock, said the bills use the "Jim Crow handbook" to prevent people from voting.

"The last time sweeping changes like this were made was sometime around the 1890s," Love said. "I will tell you this, history will judge this time in the Legislature, and it will show that these laws, all they do is disenfranchise people."

Unless otherwise stated in the bill through an emergency clause or an effective date, legislation passed during the 2021 session will go into effect in late July. A search by bill number at [arkleg.state.ar.us](http://arkleg.state.ar.us) will enable people to read the legislation.

#### Topics

[Arkansas](#), [Pulaski county](#), [Board of Election Commissioners](#), [Holly Dickson](#), [Asa Hutchinson](#), [Janine Parry](#), [Kristi Stahl](#), [Kim Hammer](#), [Mark Lowery](#), [Fred Love](#), [Brennan Center](#), [Association of Arkansas Counties](#), [University of Arkansas](#)

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# EXHIBIT T

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

**THE LEAGUE OF WOMEN VOTERS  
OF ARKANSAS, ARKANSAS UNITED,  
DORTHA DUNLAP, LEON KAPLAN, NELL  
MATTHEWS MOCK, JEFFREY RUST, and  
PATSY WATKINS,**

**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**

**AFFIDAVIT OF LESLEY MIREYA REITH  
IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

The undersigned, Lesley Mireya Reith, being first duly sworn, deposes and says:

1. I am over the age of 18 years and competent to make this Affidavit. I have personal knowledge of the facts set forth below unless stated otherwise. This Affidavit shall serve as my direct testimony in this matter.
2. I am the Executive Director of Arkansas United ("AU"), which is a plaintiff in the above-titled matter.
3. On December 16, 2021, I sat for a remote deposition as AU's designee pursuant to Arkansas Rule of Civil Procedure 30(b)(6).
4. During the course of my deposition, I explained that AU would likely have to divert its resources in order to respond to Act 736 (2021), Act 973 (2021), Act 249 (2021), and Act 728 (2021) (collectively, the "Challenged Provisions").



5. If the Challenged Provisions remain in effect, AU will need to divert significant resources.

For each Challenged Provision, AU will likely undertake community education efforts to inform our members and individuals in the communities we serve about the change in the law. These education efforts will likely be conducted in multiple languages, which will require skilled translation, particularly for technical concepts in a manner that will be understood in the proper context. Disseminating educational materials will require the time and resources of our staff and volunteers. AU may purchase radio or Facebook advertisements to ensure that the communities we serve are aware of the Challenged Provisions. AU might also seek to print literature, such as door hangers, regarding the Challenged Provisions.

6. Because of the Challenged Provisions, AU will likely seek to dedicate more resources to its “Get Out the Vote” activities, which will require additional staff time to recruit canvassers, resources to pay canvassers, training for individuals to assist members of our community at the polls, and resources and staff or volunteer time to set up hotlines to provide assistance to voters.

7. If Act 736 remains in effect, AU will seek to educate our members and the communities we serve regarding the new signature comparison requirement. AU may seek to connect individuals with their respective county clerks’ offices so that those individuals can understand whether the signatures on their voter registration applications appear similar to their current signatures. Many members of the Hispanic community, which AU serves, have four or five names. Those individuals may not remember which names they used when initially completing their voter registration application. Thus, they are at particular risk of having their absentee ballot application rejected due to a signature mismatch issue.

AU will need to devote substantial resources to ensuring that our community is informed on this issue and has the resources to respond.

8. If Act 973 remains in effect, AU will seek to educate our members and the communities we serve regarding the different deadlines for absentee ballots that are returned by mail versus absentee ballots that are returned in person. These educational efforts would be especially important because our members and individuals in the communities we serve may have limited availability to return a ballot in person during work hours, and so may be negatively impacted by the elimination of the ability to return absentee ballots in person during the weekend preceding election day. AU may also seek to offer transportation services to voters who need assistance traveling to the ballot drop off location. This will require a significant investment of time and resources for our staff and volunteers, who would coordinate such efforts.
9. If Act 249 remains in effect, AU will seek to inform our members and the communities we serve that they can no longer rely on the use of a sworn statement to verify their identity when voting. AU will likely seek to provide photocopying services for individuals who may now need to create a photocopy of their ID to include with their absentee ballot. To do so, AU will need to expend resources recruiting volunteers, coordinating with partner organizations, and executing mobile or pop-up events to provide photocopying services. AU may also help individuals who do not have compliant identification obtain such identification. AU would incur significant costs to do so, including the costs of preparing educational materials, conducting outreach to potentially affected communities, and working with individuals in those communities to secure identification.

10. If Act 728 remains in effect, AU will likely seek expert guidance to understand the implications of the act. AU will then need to dedicate resources to producing educational materials to inform our members and the communities we serve about who is permitted and who is not permitted within 100 feet of the entrance of a polling place. We will also need to provide additional instruction and training to the staff and volunteers who provide support to voters near polling places. Act 728 will also chill AU's expressive activity of supporting voters waiting in line at the polls.

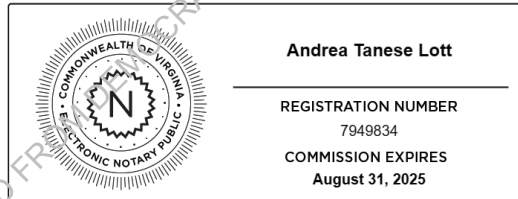
*L. Mireya Reith*

State Of: Virginia  
County Of: Culpeper

\_\_\_\_\_  
Lesley Mireya Reith

Sworn to before me this ~~20th~~ day of January 2022.

*Andrea Tanese Lott*  
\_\_\_\_\_  
Notary Public Andrea Tanese Lott



My commission expires 08/31/2025

Registration Number: 7949834

Notarized online using audio-video communication

Electronic Notary Public



# EXHIBIT U

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# Election Commissioners



[Home](#) >> [Training Resources](#)

## Training Resources

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### Training for Election Officials and Commissioners

The State Board of Election Commissioners develops resources to educate and assist county election administrators, develops specialized training programs, and conducts and coordinates statewide training of county election commissioners and election officials. Click on the links below to access resources and view more information about training conducted by the board.

### Resources for County Election Commissioners

- [2020 CBEC Procedures Manual](#)
- [2020 CBEC Training Presentation](#)
- [Election Procedures Quick Guide](#)
- [Absentee Canvassing Quick Guide](#)

[Declaratory Order 2020-002 - Absentee Ballot processing](#)

[Election Guidance for COVID-19](#)

### Training Materials for Certified Poll Worker Trainers

- [2020 Poll Worker Guide](#) - (PDF)
- [2020 General Poll Worker Training Presentation \(no videos\)](#) -- Powerpoint {County Poll Worker Training must include use of the videos below}

#### General Poll Worker Training Videos

- [Normal Voting Process](#) (YouTube)
- [Voter Check-In Process: Change In Address](#) (YouTube)
- [Voter Check-In Process: Address Not in Poll Book](#) (YouTube)
- [2020 Advanced Poll Worker Training Presentation \(no videos\)](#) -- Powerpoint {County Poll Worker Training must include use of the videos below}

#### Advanced Poll Worker Training Videos

- [Provisional Ballot Process: Non-ID Related](#) (YouTube)
- [Provisional Ballot Process: ID Related](#) (YouTube)
- [Provisional Ballot Process: Challenged Ballot & ID Related](#) (YouTube)
- [2020 Poll Judge Training - Provisional Ballot Exercises](#) - (PDF)
- [2020 Absentee Ballot Exercises](#)-(PDF)

#### Legislative Updates

- [2021 Election Related Legislation Summaries](#)

### **Postsecondary Institutions List**

- [Accredited Postsecondary Institutions List](#)

### **Advisory Standards and other helpful information**

- [Advisory Standards 2015-001 and 2015-002](#)
- [Ballot Name Certification Guidelines](#)

## **Training Resources**

- ★ [SBEC Presentations](#)

### **Quick Links**

[Arkansas Secretary of State](#)  
[Arkansas Ethics Commission](#)  
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### **Arkansas State Board of Election Commissioners**

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# EXHIBIT V

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# DOCKET NO. SBEC 2017-008

## STAFF REPORT

August 31, 2017

### The Parties and Allegations

This complaint was filed by Mr. Joseph Rogers and regards early voting for the runoff for the special election to fill a vacancy in the office of Mayor in the City of Monticello. This election was held on May 30, 2017. No respondents are listed.

This complaint alleges that the signatures of 108 voters who cast ballots in early voting did not match the signatures on file with the voters' voter registration. The Complainant developed a spreadsheet listing 108 voters and also submitted a sampling of examples of signatures he believed were not comparable.

The Complainant inquires whether election officials are required to compare the signatures on the Early Voting Request Form with the signature on file with the voter's registration. The Complainant also inquires if the signatures do not 'match' and ID isn't provided, then how can he or others determine who actually voted.

### Compliance with Requirements for Form and Timeliness

#### *Form and Timeliness*

In order for the Board to consider a complaint, it must be in writing, signed, and sworn by the Complainant under penalty of perjury. The complaint must be filed within 30 days of the election associated with the complaint. See, A.C.A. §7-4-120(b).

The complaint herein was signed under oath and filed on June 29, 2017. The allegations relate to a May 30, 2017 special election and, therefore, the complaint is timely.

## ***Election Law Allegations***

The complaint must clearly state the alleged election irregularities or illegalities, when and where the alleged activities occurred, and supporting facts surrounding the allegations. The complaint contains the following allegations:

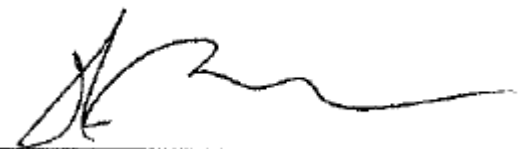

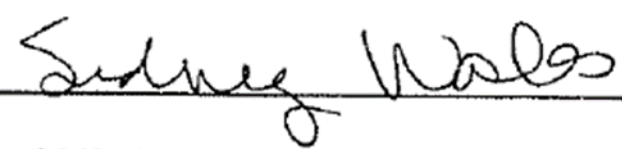
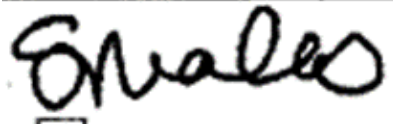
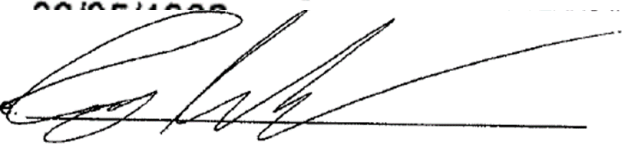


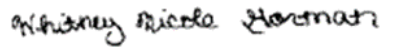
### **I. Casting a Ballot Belonging to Another**

In alleging that the signatures on the Early Voting Request Forms did not “match” the signatures on file in the voter registration records, the Complainant is implying that an unnamed individual cast a ballot during early voting in the name of a listed voter. However, in this instance, the Complainant has not directly alleged that unnamed individuals cast ballots in the name of these registered voters, only that the “signatures did not match.”

A person who casts or attempts to cast a ballot other than their own will violate a felony criminal prohibition. Ark. Code Ann. §7-7-104(a)(12).

Each of the eight examples of signatures which the Complainant alleges do not match are reproduced below:

Name of Voter	Signature from the Early Voting Request Form	Signature on File and Reproduced in the Election Day PVR List.
Linda R. Block	Signature: <u>Linda Block</u>	<u>Linda Block</u>
Austin C. Hopper	Signature: <u>Austin Hopper</u>	<u>Austin Hopper</u>
Morgan E. Hopper	Signature: <u>Morgan Hopper</u>	<u>Morgan Hopper</u>
Joan T. Wilkerson	Signature: <u>Joan T. Wilkerson</u> Birth: <u>11/02/1947</u>	<u>Joan T. Wilkerson</u> Signature for use of Voter

David T. Knight Jr.		
Sidney A. Wales		
Cody F. Wales		
Whitney N. Gorman		

In the opinion of Staff, the facts and circumstances surrounding the allegation do not generally support the conclusion that the signatures presented do not match. Seven of the eight signatures submitted on Early Voting Request Forms appear to be comparable. Only the signature for the request form filed for Mr. David Knight appears, in the opinion of Staff, to be incomparable.

Furthermore, there is no violation of law in an instance when an authorized voter signs his or her name in such a way that differs from the signature on file. Variations are often explained by the fact that signatures vary over time and the signature on file may be on file for many years or several decades. Furthermore, voters may take more time in signing the voter application registration form than they do at the poll on election day.

Given the observation that only one of the eight sample signatures appears to not compare to the voter's signature on file and that these signatures are offered as representative of an additional 100 that the Complainant merely asserts do not "match," Staff does not feel that this documentation constitutes supporting facts surrounding the allegation. Furthermore, because the factual allegations, if true, do not clearly allege a violation of law but rather merely imply a violation, Staff does not believe the Complainant, in this case, has made sufficient allegations to

establish a violation of election law. Therefore, Staff recommends that this allegation be dismissed. Staff further recommends that a copy of this report be sent to the local election officials.

**Staff recommends this allegation be dismissed.**

## **II. Comparison of Signature by Election Officials in Early Voting**

The complaint inquires whether election officials in early voting are called upon to compare the signatures on Early Voting Request Forms with signatures in the corresponding voter registration records. Although set out as a question rather than a clear allegation, Staff will address the issue here for the clarity of all parties.

State law requires that, for early voting, election officials shall request the voter identify themselves, update the voter's registration information if necessary, sign the early voting roster or early voting request form, and enter the voter's precinct number on the roster or form. Ark. Code Ann. §7-5-418(c). Early voting shall otherwise be conducted in the same manner as election day voting. Ark. Code Ann. §7-5-418(f).

The procedures for governing this special election on election day are the general election laws of this state. See, Ark. Code Ann. §7-11-301. No general election law governing the procedures for election day voting requires or permits a poll worker to compare the voter's signature on the PVR list when processing the voter into the poll to vote. See, Ark. Code Ann. §7-5-305.

No provision of election law required election officials in this matter to compare the signatures of a voter checking in to cast an early vote to that voter's signature in the voter registration records. As observed in the complaint, this differs from the rule governing absentee voting in which the County Clerk and the County Election Commission are required to compare the voter's signature at each step in the process. Consequently, even if the Complainant had alleged the poll workers failed to compare the signatures, such an allegation would not allege a violation of election law.



**Staff recommends this allegation be dismissed.**

REPRODUCTION OF STATUTES

**7-1-103. Miscellaneous misdemeanor offenses -- Penalties.**  
*(Reproduced in Part)*

(a) The violation of any of the following shall be deemed misdemeanors punishable as provided in this section:

...

(20) No person shall:

(A) Vote, knowing himself or herself not to be entitled to vote;

(B) Vote more than once at any election or knowingly cast more than one (1) ballot or attempt to do so;

**7-1-104. Miscellaneous felonies -- Penalties.** *(Reproduced in Part)*

(a) The following offenses shall be deemed felonies punishable as provided in this section:

...

(11) No person shall vote in any election more than one (1) vote;

(12) No person shall vote or attempt to vote other than his or her legal ballot;

**7-5-305. Requirements.**

(a) Before a person is permitted to vote, the poll worker shall:

(1) Request the voter to identify himself or herself in order to verify the existence of his or her name on the precinct voter registration list;

(2) Request the voter, in the presence of the poll worker, to state his or her address and state his or her date of birth;

(3) Determine that the voter's date of birth and address are the same as those on the precinct voter registration list;

(4) If the date of birth given by the voter is not the same as that on the precinct voter registration list, request the voter to provide identification as the poll worker deems appropriate;

(5) (A) If the voter's address is not the same as that on the precinct voter registration list, verify with the county clerk that the address is within the precinct.

(B) If the address is within the precinct, request the voter to complete a voter registration application form for the purpose of updating county voter registration record files.

(C) If the address is not within the precinct:

(i) Verify with the county clerk's office the proper precinct; and

(ii) Instruct the voter to go to the polling site serving that precinct in order for his or her vote to be counted;

(6) If the voter's name is not the same as that on the precinct voter registration list, request the voter to complete a voter registration application form for purposes of updating county voter registration record files;

(7) Request the voter, in the presence of the poll worker, to sign his or her name, including the given name, middle name or initial, if any, and last name in the space provided on the precinct voter registration list. If a person is unable to sign his or her signature or make his or her mark or cross, the poll worker shall enter his or her initials and the voter's date of birth in the space for the person's signature on the precinct voter registration list;

(8) (A) (i) Except as provided in subdivisions (a)(8)(A)(ii) and (a)(8)(B)(ii) of this section, request the voter for purposes of identification to provide proof of identity.

(ii) (a) A person who is a resident of a long-term care or residential care facility licensed by the state is not required to provide proof of identity before voting.

(b) A person not required to provide proof of identity under subdivision (a)(8)(A)(ii)(a) of this section shall provide documentation from the administrator of the facility attesting that the person is a resident of the facility.

(B) (i) If a voter is unable to provide this proof of identity, the poll worker shall:

(a) Indicate on the precinct voter registration list that the voter did not provide proof of identity; and

(b) Permit the voter to cast a provisional ballot.

(ii) When a voter is unable to provide proof of identity, the voter and the election official shall follow the procedure under § 7-5-321.

(iii) A first-time voter who registers by mail without providing identification when registering and desires to vote in person but who does not meet the identification requirements of § 7-5-201(e) may cast a provisional ballot.

(iv) Following each election, the county board of election commissioners may review the precinct voter registration lists and may provide the information of the voters not providing proof of identity at the polls to the prosecuting attorney.

(v) The prosecuting attorney may investigate possible voter fraud;

(9) Record the voter's name or request the voter to print his or her name on the list-of-voters form;

(10) Follow the procedures under §§ 7-5-310 and 7-5-311 if the person is a voter with a disability and presents himself or herself to vote; and

(11) Permit the person to cast a provisional ballot if the person received an absentee ballot according to the precinct voter registration list.

(b) A person not listed on the precinct voter registration list may vote only in accordance with § 7-5-306.

**7-5-418. Early Voting. (*Reproduced in Part*)**

(c) Before a person is permitted to cast an early vote, the county clerk or election official shall:

(1) Request the voter to identify himself or herself by stating his or her name, date of birth, and address in order to verify his or her registration;

~~—(2) Request the voter to present proof of identity to the county clerk or election official;<sup>1</sup>~~

(3) If the voter's name or address is not the same as that in the county voter registration record files, request the voter to complete an updated voter registration application form;

(4) Request the voter to sign an early voting roster or early voting request form that identifies his or her name, address, date of birth, and the date on the roster or form; and

(5) Enter the voter's precinct number on the early voting roster or early voting request form.

...

(f) Except as provided in this section, early voting shall be conducted in the same manner as voting on election day. Conduct that is prohibited or restricted on election day shall be subject to the same prohibitions and restrictions on the days on which early voting is conducted.

### **7-11-301. Law governing special elections.**

In cases of circumstances or procedures that may arise in connection with any special election for which there is no provision in law governing the circumstances or procedures, the special election shall be governed by:

(1) The general election laws of this state; or

---

<sup>1</sup> The marked through language notes portions of this section which have been struck down by the Arkansas Supreme Court in *Martin v. Kohls*, 44 S.W.3d 844 (2014) in which the Court found Act 595 of 2013 violated the Arkansas Constitution.

(2) In the case of special primary elections, the primary election laws of this state.

### ***Complainant's Desired Resolution***

The Complainant makes the following statements regarding his desired resolution: "I would like the state to confirm that all 108 of these voters are legal and who actually voted their ballots."

### **SBEC Options**

1. The Board can determine that the complaint may be disposed of through documentary submissions under A.C.A. §7-4-120(d)(1).
2. The Board may refer the complaint to the proper authority. See SBEC Rules of Procedure for Citizen Complaints §604.
3. The Board can determine that an investigation is necessary in accordance with A.C.A. §7-4-120(d)(2).
4. If after investigation, the Board finds that probable cause exists for finding a violation of an election law, the Board may determine that:
  - a. a full public hearing be held under A.C.A. §7-4-120(b)(6)(C);
  - b. an offer of settlement be issued imposing a fine (\$25-\$1,000) for any violation of Title 7, Chapter 4, subchapter 1 of the Arkansas Code under A.C.A. §7-4-120(e);
  - c. an offer of settlement be issued for a public letter of caution, warning or reprimand under A.C.A. §7-4-120(e); or
  - d. a letter of instruction be issued regarding compliance with the election laws in future elections. See SBEC Rules of Procedure for Citizen Complaints §605.

# EXHIBIT W

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Page 1

CLAIMS COMMISSION CASE NUMBER: 210669

IN THE ARKANSAS STATE CLAIMS COMMISSION  
LITTLE ROCK, ARKANSAS

HONORABLE JIM SORVILLO,  
Representative, District 32  
Arkansas House of Representatives,  
and Candidate for Re-Election to  
District 32 in the November 3, 2020,  
General Election held in  
Pulaski County, Arkansas,

CLAIMANT

VS.

ASHLEY W. HUDSON, Candidate for  
Election to District 32 in the  
November 3, 2020, General Election  
Held in Pulaski County, Arkansas,

RESPONDENT

---

ORAL DEPOSITION OF SHAWN CAMP

December 22, 2020

---

BUSHMAN COURT REPORTING  
620 West Third, Suite 302  
Little Rock, Arkansas 72201  
501.372.5115

## A P P E A R A N C E S

ON BEHALF OF THE CLAIMANT:

A.J. Kelly, ESQ.  
Kelly Law Firm, PLC  
P.O. Box 251570  
Little Rock, Arkansas 72225

ON BEHALF OF THE RESPONDENT:

LAUREN WHITE HOOVER, ESQ.  
LaCerra, Dickson, Hoover & Rogers PLLC  
212 Center Street  
Second Floor  
Little Rock, Arkansas 72201

ON BEHALF OF THE PULASKI COUNTY ELECTION COMMISSION:

MEAGAN DAVIS, ESQ.  
Chief Deputy County Attorney Pulaski County  
201 South Broadway  
Suite 400  
Little Rock, Arkansas 72201



1           A simple example of this would be if they  
2 did not look closely enough at the address. A good  
3 example would be a person puts on their absentee  
4 application 3 Main Street, and on their voter  
5 statement their writing makes it look as though the  
6 number "3" has closed circles making it an "8."

7           On closer review you can see that, in fact,  
8 the "8" is really a "3." But it takes a keen eye and  
9 close attention. Again, this is just an example. It  
10 could be a variety of things.

11           We do have some canvassers that look at  
12 the, when they compare the signatures, they don't  
13 take into account variables that may come in to play  
14 when, you know, the voter signs the application on  
15 one day and the voter's statement on a different day.

16           So the, the crews that were doing the  
17 secondary review can look at those signatures and see  
18 these are clearly the same person.

19           They were probably done at different times  
20 of day, or maybe blood sugar was low at one point, or  
21 whatever, but they are clearly the same, the same  
22 hand. So those are just a couple of examples of what  
23 the secondary review was looking for.

24 Q.       And in the process of this in the 2020 cycle,  
25 so this November 2020, were those, did that secondary

## COURT REPORTER'S CERTIFICATE

STATE OF ARKANSAS)

) ss.

COUNTY OF SALINE )

I, JANESE FERGUSON SMITH, CCR, RPR, a  
Notary Public in and for Saline County, Arkansas do  
hereby certify that the facts stated by me in the  
caption of the foregoing matter are true; and that  
the foregoing matter was transcribed by me, to the  
best of my ability and understanding, from my machine  
shorthand notes taken at the time and place set out  
in the caption hereto.

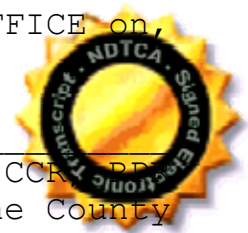
In accordance with Rule 30(e) of the  
Rules of Civil Procedure, review of the transcript  
was waived by the deponent or a party thereto.

I FURTHER CERTIFY that I am neither  
counsel for, related to, nor employed by any of the  
parties to the action in which this proceeding was  
taken; and, further that I am not a relative or  
employee of any attorney or counsel employed by the  
parties hereto, not financially interested or  
otherwise, in the outcome of this action.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on,  
this, the 22nd day of December, 2020.



JANESE FERGUSON SMITH, CCR, RPR  
Notary Public for Saline County  
and Court Reporter.



# EXHIBIT X

RETRIEVED FROM DEMOCRACYDOCKET.COM

## Pope County Clerk

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**From:** all@arkansascountyclerks.net  
**Sent:** Monday, February 22, 2021 5:24 PM  
**To:** info@arcounties.org  
**Subject:** HB1112 - Just one opinion

**This Message was sent by Betsy Harrell - County Clerk from Benton County.**

**You can reply to me at this address: [betsy.harrell@bentoncountyar.gov](mailto:betsy.harrell@bentoncountyar.gov) or you can reply to the group at [all@arkansascountyclerks.net](mailto:all@arkansascountyclerks.net)**

Dear fellow Clerks,

Below is a statement requested by a group opposing HB1112, removing the Verification of Identity Affirmation option for provisional voters, who heard through the grapevine that I am not in favor of it either. I wanted you to have it in its entirety, and to assure all of you that it is not my intention to presume to speak for anyone other than myself, since the Association has remained neutral on this bill. I hope I made that clear enough in the comments below. I also don't mean to start a debate on this, I'm sure we've all made up our minds on this one. We can agree to disagree, like we always have. Wish the rest of the world would get on board with behaving like us! Looking forward to Association meetings with everybody there in person – Bingo, anyone?

All the best,

*Betsy*  


To Whom It May Concern:

Re: HB1112

The County Clerk's Association is officially remaining neutral on this bill, so I am in no way presuming to speak for all of them. As you can imagine, 75 people come with 75 opinions, and while I respect each one of my fellow clerks as individuals with the right to their own opinions, I do not support HB1112.

My personal opinion regarding whether or not every person "should" possess a photo ID and show it when voting is irrelevant. As an elected official who serves over 172,000 legally registered voters, my duty is to ensure, to the best of my ability, that each and every one of them feels they have equal access and opportunity to participate in our country's election process. Over my past 16 years as a "front-line" participant in the voter registration and election administration process, I have come to feel very protective of those voters and their rights, and that must be my main concern.

I feel that our current process, adopted in 2017, in which a person unable to provide the required photo ID is allowed to vote a provisional ballot and sign the "Verification of Identity Affirmation", is adequate protection against anyone impersonating a registered voter. I believe it has served its purpose well.

The statement on every provisional envelope signed by the provisional voters reads:

*"I, (name of voter) hereby affirm, under penalty of perjury, that I am registered to vote in the State of Arkansas and that I am the person who is registered to vote using the information reproduced below".* A note is included at the bottom, just beneath the signature line which informs the voter that "Perjury is defined by Arkansas law as a Class C Felony and is punishable by no less than three years and no more than 10 years in prison and up to \$10,000 fine". (A.C.A. 5-4-201, 5-4-401) That would scare me if I was contemplating committing election fraud! Affidavits are accepted in a court of law, so it seems logical that they should be accepted for this purpose – the verification of a person's legal eligibility to vote. And it has been accepted since 2017.

- HB1112 does not propose new legislation, it is simply striking down the allowance for a *legally registered voter* to cast a ballot unless they cross another hurdle of providing something not currently required in order to



register to vote in Arkansas. (Age 18, a U.S. citizen and resident of the State of Arkansas, mentally competent, and free of outstanding felonies that have not been satisfied). Similar legislation was struck down by the Arkansas Supreme Court in 2014. It was in effect during the 2014 Preferential Primary held in May, but struck down just 3 days before the start of early voting for the 2020 General Election. The effect of a court challenge and the timing of a decision being handed down is concerning. Voters deserve to know that the rules will be the same every time they go vote. Lack of consistency in election rules is one of the main complaints that I hear from voters.

- Requiring a second trip to a county clerk's office or election commission office in the days following an election could impose an undue burden on some people, and in some cases might not even be possible. There is no provision for electronically submitting a copy of the required ID. What if during a March Preferential Primary, we get hit with the weather like we had last week? No one was going anywhere last Monday in Northwest Arkansas. (As a side note, how fun would it have been to conduct early voting last week?)
- There is no provision for those voting absentee. Even in this time of technology invading every corner of our lives, many elderly and less economically advantaged people do not have the ability to reproduce a photocopy in their homes. Requiring people who by definition are UNABLE to attend a polling site to make a trip to a specific location in order for their vote to be counted is unfair.
- The ability of the county clerk's office to issue a photo identification card is being offered as a solution to those without traditional identification. Part of that process is signing an affidavit which states that they are "unable to provide" any of the acceptable forms of ID. Why is an affidavit adequate for this purpose, but not adequate for the purpose for which it is now being used on the Provisional Ballot Envelopes? What's the difference? Some will see that as creating another layer of hoops to jump through. The "rules" currently in place for issuing this clerk-produced ID clearly exclude a portion of our society who may still be unable to provide the required documentation, or at least not in time to meet the deadline of the Monday following the election. I'm attaching our current set of rules. There are many items that a homeless person, for example, would not be able to provide.
- In the 2020 General Election, Benton County processed 268 provisional ballots due to the voter not having the accepted form of ID. They all signed the affidavit, and were verified by my office as being registered Benton County voters because the name, address, birthdate and signatures matched. If 268 people show up at the county clerk's office at 8:00 a.m. on Monday after the election asking for voter verification cards, it will be impossible to process them by 12 noon.
- In the 2020 General Election, valid absentee ballots which were counted would have been rejected under this proposed legislation, even though the voters' signatures were matched with their voter registration records and the absentee applications.

I am not aware of any reports of voter fraud occurring in the State of Arkansas in 2020, so it would seem that the laws we have in place are working as they should. Furthermore, if such fraud has been identified, I think the best deterrent would be vigorous prosecution, not placing an undue burden on legitimate voters and the election officials at the county level who will be face-to-face with voters explaining why their votes will not be counted. My greatest fear is that there will be that one, legally registered voter who, for some reason we have not anticipated, is unable to fulfill this requirement, and loses their right to vote – the proverbial dolphin in the tuna net, if you will. And just one is one too many.

# EXHIBIT Y

RETRIEVED FROM DEMOCRACYDOCKET.COM

**From:** [Askew III, Jess L.](#)  
**To:** [Peters, Cassy L.](#)  
**Subject:** FW: Public Records Request  
**Date:** Thursday, January 13, 2022 10:42:02 AM  
**Attachments:** [2022.01.11\\_FOIA Letter to Clay County Clerk.pdf](#)

---

**Jess Askew** | Partner | **Kutak Rock LLP**

124 West Capitol Avenue, Suite 2000, Little Rock, AR 72201-3706

**D** (501) 975-3141 | **O** (501) 975-3000 | **C** (501) 412-6594

[Jess.Askew@KutakRock.com](mailto:Jess.Askew@KutakRock.com) | [www.KutakRock.com](http://www.KutakRock.com)

---

**From:** Brande Boyd <clayclerk@outlook.com>  
**Sent:** Wednesday, January 12, 2022 3:58 PM  
**To:** Askew III, Jess L. <Jess.Askew@kutakrock.com>  
**Subject:** FW: Public Records Request

**[ CAUTION - EXTERNAL SENDER ]**

We did not have anyone in our county (Clay County) receive an "application and affidavit for voter verification" or a free "voter verification card" from January 1, 2017 to present.

Thank you,  
Brande Boyd  
Clay County Clerk  
Piggott, AR  
870-598-2813

Sent from [Mail](#) for Windows

---

**From:** Clay Clerk <[clayclerk@arkansasclerks.com](mailto:clayclerk@arkansasclerks.com)>  
**Sent:** Wednesday, January 12, 2022 3:05:58 PM  
**To:** [clayclerk@outlook.com](mailto:clayclerk@outlook.com) <[clayclerk@outlook.com](mailto:clayclerk@outlook.com)>  
**Subject:** Fw: Public Records Request

---

**From:** Peters, Cassy L. <[Cassy.Peters@KutakRock.com](mailto:Cassy.Peters@KutakRock.com)>  
**Sent:** Tuesday, January 11, 2022 2:40 PM  
**To:** Clay Clerk  
**Subject:** Public Records Request

Please see correspondence from Jess Askew in regard to the referenced matter.

**Cassy L. Peters**

Legal Assistant

**Kutak Rock LLP**

Suite 2000

124 West Capitol Avenue

Little Rock, AR 72201-3706

[cassy.peters@kutakrock.com](mailto:cassy.peters@kutakrock.com)

**p:** 501.975.3000 x 3117 **f:** 501.975.3117

*Support provided to*

**Jess Askew** | Partner | **p:** 501.975-3000 | [jess.askew@kutakrock.com](mailto:jess.askew@kutakrock.com)

**Teresa M. Wineland** | Of Counsel | **p:** 501.975-3000 | [teresa.wineland@kutakrock.com](mailto:teresa.wineland@kutakrock.com)

**Ashley Welch Hudson** | Partner | **p:** 501.975-3000 | [ashley.hudson@kutakrock.com](mailto:ashley.hudson@kutakrock.com)

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This E-mail message is confidential, is intended only for the named recipients above and may contain information that is privileged, attorney work product or otherwise protected by applicable law. If you have received this message in error, please notify the sender at 402-346-6000 and delete this E-mail message.

Thank you.



# EXHIBIT Z

RETRIEVED FROM DEMOCRACYDOCKET.COM





RETRIEVED FROM DEMOCRACYDOCKET.COM



# EXHIBIT AA

RETRIEVED FROM DEMOCRACYDOCKET.COM

STATE BOARD OF ELECTION COMMISSIONERS  
OFFICIAL COMPLAINT FORM

SBE 2016-21

Name: James Gross  
Address: 21 Sunset Dr Little Rock AR 72207  
County: Pulaski  
Day Phone: 5019406367  
Email: jamesgrossman1@gmail.com  
Election/Date: november fourth twenty sixteen

*A complaint must be filed with the board in writing within thirty (30) days of an alleged voter registration violation or the election associated with the complaint. Arkansas Code Annotated § 7-4-120*

*Please begin the details of the complaint below and attach additional pages if needed. Be specific as to the nature of the alleged election irregularities or illegalities, indicate when and where the allegations occurred, provide supporting facts surrounding the allegations, and state your desired resolution.*

I waited for an hour and a half in the line to early vote at my voting place, Dee Brown library, and the line never moved. I ended up having to leave to go back to work, because this was from 12-1:30. There should be more workers that are manning the voting stations during early elections and I'm sure during normal elections too. I realize that this complaint will be overlooked and will not be attended to, but it shouldn't be so difficult to vote that even able-bodied 21 year olds can not even vote early, when there are less people voting. During my time waiting in line I saw more people leave the line then I saw enter the entrance, which was difficult to see as the line wrapped around the building because it was so long. I also recieved misinformation about early voting and when it ends, and am still in the dark as to when early voting is. I cannot express enough how frustrated and aggravated I am at the fact that I wasn't even able to vote then and more than likely won't be able to vote this election, which is a monumental election for everyone because of the fact that I, and many many others like me, literally don't have two or three hours to devote to voting, either during the work week or weekend. I realize that an absurdly long wait time to vote is not a crime in and of itself, but something absolutely needs to be done to resolve the problem NOW and I'm sure that there's a way to work it out. There could be a volunteer-to-vote program where you volunteer 30 or 45 minutes of your time to work the voting stations and also get to vote before you leave that I know people would sign up to in droves. That would not only help everyone going to vote, but the poeple volunteering because they also get to vote. I know that I would do something like this, if only because I could actually vote in a reasonable amount of time. There NEEDS to be something done about this NOW. Why am I paying taxes if I can not even vote in my own home state. No taxation without representation, and I have no time to wait actual hours at a time to vote, but I somehow have time every paycheck to pay the government money so that they can put it in their pockets and spend one percent of one percent of one percent on actually setting up and running elections.

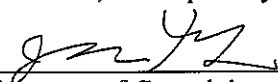
RECEIVED

NOV 04 2016

S.B.E.C.

**AFFIRMATION**

The facts set forth in this complaint are true and correct to the best of my knowledge, information and belief, under penalty of perjury.

  
Signature of Complainant

11/4/2016

Date

Remit to: State Board of Election Commissioners

501 Woodlane, Suite 401 N  
Little Rock, AR 72201  
501-682-1834 / 800-411-6996

# EXHIBIT BB

RETRIEVED FROM DEMOCRACYDOCKET.COM

# DOCKET NO. SBEC 2018-068

## INVESTIGATION REPORT

May 20, 2019

### Conclusion of SBEC Investigation and Staff Recommendation

#### **ISSUE I: Voter Privacy and Arrangement of the Poll**

##### **RECOMMENDATION: Letter of Instruction**

The investigation found that the voting equipment was set up in such a way that voter privacy was compromised and that the equipment was arranged in this way by Staff of the Crittenden County Board of Election Commissioners (CCBEC). Staff further found that the poll workers utilized the equipment where it was placed when they arrived and made no effort to rearrange this equipment to better protect voter privacy.

Staff recommends the SBEC dismiss this issue and send a **Letter of Instruction** to Poll Workers and the CCBEC regarding how to arrange voting equipment to ensure voter privacy.

#### **ISSUE II: Eliciting Required Voter Statements when Processing Voters into the Poll**

##### **RECOMMENDATION: Letter of Instruction**

The investigation found that poll workers at both the St. Luke's Church and the Earle City Hall polling sites routinely processed voters into the poll without requiring these voters to state their address and date of birth aloud. Instead, the poll workers obtained this information from photo IDs provided by the voters.

Staff recommends the SBEC dismiss this issue and send a **Letter of Instruction** to Poll Workers at the St. Luke's Church and the Earle City Hall instructing them on proper voter check-in procedure.

### **ISSUE III: Failure to Require Voters to Present Photo Identification**

#### **RECOMMENDATION: Letter of Instruction**

The observation of the election monitor states unequivocally that a single voter was allowed to vote without showing the required photo ID; however, Staff's investigation was unable to determine which individual poll worker was responsible for this omission.

Staff recommends the SBEC dismiss this issue and send a **Letter of Instruction** to Poll Workers at the Earle City Hall polling site instructing them on proper voter check-in procedure regarding the ID requirements.

### **ISSUE IV: Electioneering by a Poll Worker**

#### **RECOMMENDATION: Letter of Reprimand**

The investigation indicates that Ms. Joyce McEwen, an Earle City Hall poll worker, made statements which constitute electioneering regarding issues on the 2018 General Election ballot.

Staff recommends the SBEC offer to resolve this complaint with a with a **Letter of Reprimand**.

### **ISSUE V: Timely Opening of the Polls**

#### **RECOMMENDATION: Dismissal**

The investigation was unable to substantiate the report of a third party that the polls did not open on time and generated circumstantial evidence which indicates the poll did in fact open at 7:30am as required by law.

Staff recommends the SBEC resolve this complaint with a with a **Dismissal**.

## **ISSUE VI: Processing a Voter Who does Not Appear on the PVR List**

### **RECOMMENDATION: Letter of Caution**

The investigation found that an unnamed voter was sent from the St. Luke's Polling Site to the Earle City Hall Polling Site without the poll workers from St. Luke's having contacted the County Clerk to determine if he was registered to vote and at what polling site he was required to vote.

Staff recommends the SBEC offer to resolve this complaint with a with a **Letter of Caution** sent to poll workers Mr. Archie Wright and Ms. Virgil Wright.

## **ISSUE VII: Poll Workers Assisting Voters**

### **RECOMMENDATION: Letter of Instruction**

The investigation determined that at least one poll worker did assist voters without the observation of a second poll worker; however, Staff finds her assertion that she did so only because no other poll workers were available to help credible in light of the monitor's assessment of how comparatively busy this polling site was.

Staff recommends the SBEC dismiss this issue and send a **Letter of Instruction** to Poll Workers at the Earle City Hall polling site addressing the importance of ensuring two poll workers are present any time a poll worker is assisting a voter in marking his or her ballot. Staff also recommends a **Letter of Instruction** be sent to the CCBECE directing that they reevaluate staffing levels at this polling site.

## **ISSUE VIII: Keeping an Assistant to Voters Log**

### **RECOMMENDATION: Letter of Instruction**

The investigation found that a log of assistants to voters was kept but that it did not include poll workers who assisted voters. While it is arguable whether this is required, SBEC training has directed that poll



workers also be logged, at minimum, as a best practice to document compliance with the rule that two poll workers must participate in the assistance of a disabled voter by a poll worker.

Staff recommends the SBEC dismiss this issue and send a **Letter of Instruction** to Poll Workers at the Earle City Hall polling site that reiterate the importance of keeping the log of assistance to voters for non-poll worker assistance and give instruction that, as a best practice, the poll workers assisting voters should also be noted in this log.

### **The Parties and Allegations**

This complaint was filed by SBEC Director Heather McKim on behalf of the SBEC on December 6, 2018. The complaint regards the 2018 General Election in Crittenden County.

This complaint is filed by the SBEC in order to investigate issues raised by the Certified Election Monitor that was sent by the SBEC to observe the 2018 General Election in Crittenden County. The complaint affirmatively alleges and incorporates each assertion contained in the report of the Certified Election Monitor, Mr. Bruce Haggard. The observations contained in this report relate to Election Day, November 6, 2018. With the exception of Issue II & X, Staff will only recount in this report those assertions that suggest a violation of election law.

The complaint's factual narrative begins on page 2 with the arrival of the monitor at the Earle City Hall polling site around 8am on Election Day. The complaint recounts a conversation with Mr. Kenneth Cross who requested the election monitor. In this conversation, Mr. Cross is said to have told the monitor that the Earle City Hall was not open for the first 30 minutes of early voting.

The report identifies the arrangement of the voting equipment in the Earle City Hall as problematic. The arrangement that is described in the report, and depicted in a diagram produced by Staff in Exhibit 1, would require voters to cast their ballots within three feet of another voting machine. The report also indicates voters would not be able to ingress or egress from the center machine without being able to view the ballot of a voter on one of the outer machines. The same problem would

exist if a poll worker was called over to assist a voter on the center machine.

The monitor then notes that lines to vote persisted through the day and were described as approximately 25 people long. The monitor identified time spent at the voting machines as a possible explanation for this line. The monitor calculated that between 11am and the close of the poll, if you assumed the voting machines were in continuous use, voters would have spent an average of 6 minutes voting. The monitor identified two individuals who spent “approximately 10 minutes” and who were “hurried” by the poll workers.

One of the most concerning observations at the Earle City Hall poll was the statement made by a poll worker while giving instructions to people waiting in line. An unnamed poll worker is said to have instructed voters to skip the first three ballot issues which she said were not to be counted. She then is said to have suggested that casinos mean more jobs and that “you know how to vote.” Regarding the minimum wage amendment, she is said to have stated, “I don’t need it, but you might.” This line of instruction was concluded by saying “I can’t tell you how to vote.” The statements seem to have been made in an effort to speed up the voting process and Staff infers the intent would be to help voters make up their mind so that they did not need to spend as much time reading the ballot.

The monitor also observed a single voter who did not provide photo ID and who was permitted to vote a regular ballot after verbally stating his name, address, and date of birth. The report indicates the poll worker followed pre-Voter ID procedures.

Regarding the assistance of voters, the report states that when poll workers assisted voters while they were voting, they did so without a second poll worker to observe the process. The report also indicates poll workers did not always record individuals who were selected by a voter to assist that voter.

For both the Earle City Hall polling site and the St. Luke Baptist Church polling site, the report indicates voters were not required to verbally state their name, address, and date of birth. The report indicates that voters almost universally provided their driver’s licenses

and the poll workers consulted these documents to obtain the name, address, and date of birth.

Staff notes there are also general issues regarding the arrangement of the poll or allocation of resources that, while not constituting a violation of law, raise issues that should be reviewed by the CCBEC.

### **Factual Findings of the SBEC Staff Investigation**

In order to investigate these allegations, Staff sent interrogatories to the poll workers at both voting locations, and to the members of the CCBEC.

#### **ARRANGEMENT OF EARLE CITY HALL POLLING SITE**

In the Interrogatories sent to the Earle City Hall Poll Workers and the CCBEC, Staff included a diagram of the arrangement of the Earle City Hall based on the description in the Monitor Report. See, Exhibit 1. This diagram included measurements of three feet between each voting machine and showed the front of the machine as three feet from the wall. Each of the four poll workers who responded from the Earle City Hall polling site stated that the diagram accurately described the arrangement of the marking devices in the poll.

The responses of the CCBEC members as well as the poll workers indicate that the “setup crew” placed the voting equipment in the poll the day before the election. Comm’r Barton stated that he was informed by his election coordinator, Mike Farrar, and assistant coordinator, Amelia Stuckey, that the machines were less than six feet apart but more than three feet apart and were facing the wall. Comm’r Barton also stated that, although he was not present at this location in the 2018 election, he is aware that there are several pieces of bulky furniture that could be moved to create more room in the poll.

In a follow-up phone call with Mr. Haggard, he stated that in his opinion, there was room to pull the machines out from the wall and spread them further apart from one another. He further stated that

there was an alternative wall they could have been placed on which would have allowed more room than was provided.

#### ELICITING VOTER STATEMENTS – ST. LUKE’S POLLING SITE

Three of the four poll workers at the St. Luke’s Church polling site responded to SBEC Interrogatories. Of these three, Mr. Archie Wright stated that he operated the electronic poll book and Ms. Virgil Wright kept the list of voters. The third poll worker, Ms. Mary Childs, stated that she helped voters operate the voting equipment.

Of the two poll workers identified as participating in the voter check-in process, Mr. Archie Wright stated that they were asked their name, address, and DOB as well as asked to provide ID. Ms. Virgil Wright’s answer omitted the date of birth. When asked: “If you processed voters into the [polling site] without them stating their address and date of birth, please describe how you were able to verify the voters was legally entitled to vote.” Mr. Wright stated; “Their ballot would show up on the tablet.” Ms. Wright stated; “Voter always verified their name and address as it is on the Identification Cards.” Neither person rejected the premise of the question or stated that no voters were checked in without stating their address and DOB.

#### ELICITING VOTER STATEMENTS – EARLE CITY HALL POLLING SITE

Of the four poll workers who submitted answers to the SBEC interrogatories, all four reported having participated in the voter check-in process to some degree. Ms. McEwen, who described her job as to “Enroll ID,” described the check-in process as they were required to have voters state their name, address, and DOB and to ask for ID. When asked how a voter could be checked in without making these statements, she said that they had to make these statements or “call the clerk’s office.”

Ms. Smith, who said she kept the voter list and helped operate the machines, also stated correct procedure and that if this wasn’t done then they were to call the county clerk. When she was asked how a voter could be checked in without making these statements, she did not clearly reject

the premise of the question but stated: "Ask for ID name & address or call in."

Ms. Johnson articulated the correct check-in procedure but when she was asked how a voter could be checked in without making these statements she answered: "asked for IDs and pass it to the register." This suggests she would have accepted an ID to obtain the voter information from the ID.

This is clearly the case for Ms. Nicks who, after correctly describing the check-in process, stated that if these statements were not made then she would, "ask for ID, try to pull it up, if not call in."

In the follow-up call with the Election Monitor, Staff asked whether poll workers at the Earle City Hall site rotated jobs within the poll. He stated that they did, but the problem of voters not stating their name and address persisted regardless of any change in poll workers.

#### FAILURE TO REQUIRE VOTER ID

The report of the Election Monitor stated that he observed a single voter who was allowed to vote without showing an ID. Each of the four poll workers who filed written response clearly deny any involvement in such an incident and indicates they are not aware of any such incident.

Staff contacted the monitor in order to obtain further details regarding this issue. He stated that it appeared the poll worker who checked in this voter had a personal relationship with the voter. He said he could not give any additional information regarding which poll worker was involved.

#### POLL WORKER ELECTIONEERING

The report of the Election Monitor stated that, on at least one occasion, a poll worker included a statement in her instructions to voters that they should skip statewide ballot issues that she informed them would not be counted. This same poll worker was then alleged to have made certain comments about two of the issues for which ballots were to

be counted including stating the voting for casinos meant more jobs and that some of the voters may need an increase in the minimum wage.

Ms. McEwen states under oath that she did tell voters to skip certain issues on the ballot and that she was the only poll worker to do so. When asked whether she made comments regarding the minimum wage or casino issues on the ballot, she appears to have marked through an answer which relates to a different question entirely and then wrote what Staff interpreted as “only time 2” followed by “No.” Exhibit 2. Based on her patterns of answering questions thus far, Staff believes the “only time 2” is an answer for the first part of the question asking whether she made the comments. The question then asks if the Respondent heard comments made by other poll workers along this line. It is this second question that Staff attributes the answer “No.”

Two of the poll workers who also returned interrogatories, Ms. Johnson and Ms. Nicks, stated that they heard one other poll worker make these statements to the voters but made no such statements themselves.

Given that Ms. McEwen unequivocally states she instructed voters to skip issues and appears to state, however less clearly, that she only made substantive comments on the ballot issues twice, Staff has identified Ms. McEwen as the person described in the monitor report. The statements in the report, and by two other poll workers under oath, indicate that a single poll worker is responsible for both the instruction to skip races and the comments on the issues.

However, given the severity of this issue, Staff attempted to obtain photographs of the poll workers via social media and did so successfully for three of five individuals. These photos were sent to Mr. Haggard and he identified Ms. McEwen as the photo most resembling the poll worker he observed. He stopped short of a conclusory statement that this was the person because of the low quality of the photo, but stated that the photo was entirely consistent with the poll worker in question.

## TIMELY OPENING OF THE EARLE CITY HALL POLLING SITE

The Monitor Report did not include a direct observation that the poll didn't open on time but quoted a third party who came up to the monitor and informed him the poll was not opened on time.

All four of the Earle City Hall poll workers stated under oath that the poll was opened on time and the CBEC member stated under oath that that they received no complaints regarding the timeliness of the poll's opening. The chair of the CCBEC, Ms. Dixie Carlson, stated that the zero tapes from the Earle City Hall stated that the poll opened at 7:10am. She also provided a copy of the zero tapes for both polling sites that were observed. Exhibit 3.

## PROCESSING AN INTER-COUNTY CHANGE OF ADDRESS

The three poll workers who responded from the St. Luke's polling site each stated that at least one voter was sent from their poll to Earle City Hall. Mr. Archie Wright was the only person to recall two such individuals and explained that they had moved from their original address to a new address. Ms. Wright states that the person she recalled couldn't be found on the iPad. Ms. Childs, who was not identified as a person who checked in voters, stated that the one such person she recalled never returned.

Of the Earle City Hall poll workers, Ms. Johnson stated that she recalled a voter who was sent from their poll to another poll and who returned again. Ms. Nicks recalls a voter coming in that was "sent away" from another poll and was given a provisional ballot. She did not recall any being sent from her poll and returning. Ms. Smith recalled one person being sent away, returning, and then voting a provisional ballot. Ms. McEwen gives the most detailed account stating that she recalled such an incident and that they "found out they registered late, the clerk told to give them a provisional ballot."

## POLL WORKER ASSISTING VOTERS AND KEEPING THE VOTER ASSISTANT LOG

The CCBEC supplied copies of the voter assistance logs for the Earle City Hall polling site which contained a single entry. Exhibit 4. The monitor report stated that third parties were permitted to enter and assist the voter without recording this person on the assistant to voters form. The monitor clearly uses the plural when referring to this incident. Ms. Johnson also mentions assistants to voters being present in the poll in a sentence which lacks numerical agreement but is at least in part plural.

Staff contacted the monitor to inquire whether a single assistant to the voters recorded on the log was possible for non-poll worker assistance. He said the vast majority of the assistance was provided by poll workers and only a very few assistants selected by the voters were observed. Taken together, Staff must conclude that while it is likely a small number of individuals may have been omitted from the assistant log, a log was kept and the number of assistants who were not logged, excluding poll workers, was minimal.

Regarding the assistance of voters, one poll worker, Ms. Johnson, stated that she assisted voters in the marking of their ballots and did so without assistance from a second poll worker. She states that: "I did tell poll workers to observe. There was not enough poll workers." The other three poll workers all stated that they did not assist a voter in the marking of their ballot.

### **Analyses of Issues following the SBEC Investigation**

The following issues have been identified as addressing potential violations of law if the factual allegations made by the complaint are true. The SBEC may pursue statutory sanctions if the Board determines that it has probable cause to conclude that the Respondents violated the relevant election law or voter registration law provisions.



## **I. Voter Privacy and Arrangement of the Poll**

The investigation of this matter confirmed the observations of the Certified Election Monitor described the Earle City Hall marking devices as approximately three feet from one another and three feet from the wall. See, Exhibit 1. The investigation concluded that it would have been almost impossible for a voter to ingress to or egress from the interior ballot marking device, if the outer devices were in use, without comprising the privacy of the voter using the outer marking device.

State law requires; “The machines shall be placed so that no person can see or determine how the voter casts his or her vote.” A.C.A. §7-5-521. The poll workers are specifically required to ensure this privacy. A.C.A. §7-5-310. State law also requires that the no person, other than election officials or persons in the process of voting, may be within six feet of a voting machine. *Id.*

Based on the monitor report and subsequent investigation, Staff has concluded that the arrangement of the poll was such that, if a voter was using an outside ballot marking device, their privacy would have been violated when a voter was traveling to or from the interior marking device. This is because a voter passing behind the voter using the machines would be mere inches from the voter in the process of voting.

Staff also determined that the marking devices were placed in this arrangement by workers prior to election day and that the poll workers simply operated the equipment where they found it when they arrived that morning. The legal responsibility for ensuring privacy in voting clearly falls to the poll workers, therefore, there is probable cause to conclude the poll workers violated A.C.A. §7-5-310. However, Staff is reticent to recommend sanctions against the poll workers as a whole when the equipment was pre-placed in the poll. Staff does recommend that a **Letter of Instruction** be sent to the poll workers directing them to rearrange voting machine to create sufficient distance between each machine to permit each voter to travel to and from their device without being in a position to view any other voter’s screen.

Staff further recommends that a **Letter of Instruction** be sent to the CCBEAC members directing them to train their workers who deliver and setup the poll to place the voting equipment so that there is sufficient

distance between each machine to permit each voter to travel to and from their device without being in a position to view any other voter's screen.

## **II. Eliciting Required Voter Statements when Processing Voters into the Poll**

The monitor report also states poll workers at the Earle City Hall polling site and the St. Luke Baptist Church polling site did not require voters to state their name, address, and date of birth when a driver's license was provided. The monitor stated that the clerks "studied the driver's license closely" when checking in voters. Staff's investigation found that although a few poll workers did articulate the correct procedure and stated that they followed these procedures, most poll workers seemed to indicate that they could and did obtain this information from the Photo ID that was provided.

State law requires a poll worker to take certain steps prior to allowing a person to cast a ballot. The first requirement is that the poll worker request the voter to identify him or herself. A.C.A. §7-5-305(a)(1). The second requirement is that the poll worker, "Request the voter... to state his or her address and state his or her date of birth[.]" A.C.A. §7-5-305(a)(2).

The report and subsequent investigation clearly support the conclusion that the poll worker check-in process in these polls did not consistently require voters to state their name, address, and date of birth aloud. With respect to individual poll workers, there are several for whom Staff could recommend a finding of probable cause to designate as responsible; however, it is not clear that this is true for all responsible parties. Without names being listed in the monitor report, it is difficult to reach definitive conclusions regarding who precisely is responsible.

Staff does believe that there was a systemic problem of poll workers believing that obtaining the required information from the IDs without it being said aloud was sufficient. The reason poll workers are asked to do this is because it allows poll watchers to hear this information and ensures the failure to update a driver's license or similar document that has an address does not negatively impact the voter's right to vote.

However, this nuanced requirement is often overshadowed by the desire to avoid confrontation with voters who do not want to state this information aloud and the ease of simply reading what they already have in their hand.

Consequently, although Staff believes probable cause exists with respect to at least some poll workers that they violated A.C.A. §7-5-305, Staff recommends this matter be resolved with a **Letter of Instruction** to all poll workers directing them to consistently require voters to make the mandatory statements prior to being allowed to vote.

### **III. Failure to Require Voters to Present Photo Identification**

The monitor report also states poll workers at the Earle City Hall polling site did not require voters to state their name, address, and date of birth aloud.

Pursuant to Act 633 of 2017 and a subsequent Supreme Court ruling upholding the Act, State law requires a poll worker to request a voter to present a document or identification card which satisfies certain requirements including having the voter's name and photograph displayed on the card. A.C.A. §7-5-201(d)(1)(A); ARK. CONST. AMEND. 51 §13(b). A resident of a residential care facility is exempt from this requirement if they instead provide a document signed by the administrator of the nursing home. ARK. CONST. AMEND. 51 §13(b)(2)(B). If an in-person voter fails to provide any form of identifying document, the voter is required to vote a provisional ballot. ARK. CONST. AMEND. 51 §13(b)(2)(A); A.C.A. §7-5-305(a)(8)(B).

Staff's investigation did not supply any additional information that substantiated the observation of the certified election monitor. When contacted about this issue, the monitor stated that, while he could not identify the poll workers who checked-in the voter in question, he did recall that the poll worker appeared to have a personal relationship with them. Given that this appears to be a single failure to follow this procedure in the case of a personal acquaintance, Staff does not believe there is a significant nature of fraudulent behavior in this case.

Although Staff believes probable cause exists that this event occurred, Staff does not have probable cause that any individual poll worker is responsible for this violation.

Therefore, Staff recommends this issue be resolved with a **Letter of Instruction** to the poll workers at Earle City Hall addressing the importance of asking IDs from all persons, even close personal acquaintances, to ensure the appearance of propriety as well as compliance with the law.

#### **IV. Electioneering by a Poll Worker**

The investigation determined that the poll worker at the Earle City Hall polling site that was observed commenting on how voters should vote on specific ballot issues was Ms. Joyce McEwen. In giving instructions to the voters, which the monitor described as an effort to speed up the voting process, a poll worker told voters to skip amendments which she stated would not be counted. In this discourse, she is also said to have made comments suggesting that voting for the Casino Amendment will increase job opportunities and suggested that, while she didn't need an increase in the minimum wage, the voters might.

State law prohibits any person, including election officials, from doing "any electioneering of any kind whatsoever" inside a building where early voting is being conducted or within 100 feet of the main entrance of that building. A.C.A. §7-1-103(a)(8)(A).

The statements made regarding the casino issue clearly call for voters to cast their ballots in favor of that issue. Statements regarding the minimum wage were less clearly advocating in favor of the issue but they were clearly substantive statements regarding the issue which were designed to encourage at least some voters to consider voting in favor of the issue. In addition, the statement that the first three issues were not to be counted was factually incorrect. Issue 2, which addressed Voter ID requirements in voting, was temporarily struck off the ballot by a lower court but placed back on the ballot by the Arkansas Supreme Court. Consequently, Ms. McEwen's statements if followed by the voter, would

have caused a voter to skip a race in which they were legally entitled to vote.

Staff recommends that the SBEC find probable cause exists that the Ms. McEwen engaged in electioneering that this constitutes a violation of A.C.A. §7-1-103(a)(8). Staff recommends an offer be sent to settle this matter with a **Letter of Reprimand**.

## **V. Timely Opening of the Polls**

The Election Monitor recounts a conversation with the individual who requested the monitor be appointed. In this conversation, it is alleged that the poll located at the Earle City Hall was not open during the first 30 minutes of voting hours. The report indicates the conversation occurred shortly after 8:00am which would suggest the poll opened shortly before the monitor arrived. Staff's investigation found no evidence to corroborate these statements and confirmed the ballot tabulator for this poll was ready for use at 7:10am.

State law requires that polls open at 7:30am and remain open continuously until 7:30 pm. A.C.A. §7-5-304(a)

Staff's investigation resulted in unequivocal statements from all poll workers who responded that the poll was opened on time. The fact the CCBEC had no complaints regarding this issue and that there is a zero tape indicated the poll was ready to begin counting votes twenty minutes before the poll was required to open is fairly reliable evidence there was no issue regarding the poll being opened late. Staff notes that the person who made this statement is a candidate and that he appears to have suggested to our monitor that the poll should remain open extra time based on this allegation which may suggest a motivation for his statements. This is certainly not conclusive but, when weighed against verbal hearsay of an interested party, Staff believes there is insufficient evidence to support a probable cause finding that the poll was not opened in a timely manner.

Staff recommends that the SBEC find it does not have probable cause the Earle City Hall was not in operation at 7:30am and therefore recommends this issue be **Dismissed**.

## **VI. Processing a Voter Who does Not Appear on the PVR List**

The report mentions a situation where a voter whose address had changed was sent “back and forth” between polls before ultimately being offered a provisional ballot. The investigation determined that at least one voter was in fact sent from the Earle City Hall Poll to St. Luke’s and then back again. Based on information gathered in the report and from the investigation, it appears this individual was not listed in either poll book because the voter transferred voter registration into the county after the cutoff.

In the event a voter states an address that differs from the address listed in the PVR list, or no address is found, poll workers are required to contact the county clerk and determine whether the voter’s new address lies within the precinct and whether the individual is registered to vote. A.C.A. §§7-5-305(a)(5); 7-5-306(a). If the voter is changing his address within the county and the new address is within the precinct, the voter is required to fill out an updated voter registration form and is permitted to vote. *Id.* If the address is outside the precinct, but inside the county, the poll worker is to instruct the voter that he or she must go to the polling site serving their correct precinct in order for that person’s vote to be counted. *Id.* If the county clerk cannot identify a voter as being registered to vote and the voter “contends” that he or she is registered, poll workers are required to permit the voter to cast a provisional ballot. A.C.A. §7-5-306(b).

### **A. St. Luke’s Polling Site**

Staff’s investigation found that both of the individuals who identified themselves as being involved with the voter check-in process stated that at least one voter was instructed to leave the poll because that person’s name did not appear on the PVR List but without determining whether the voter was registered to vote by contacting the County Clerk’s Office. The poll workers were obligated to contact the county clerk any time a voter presents themselves to vote asserting that they are registered to vote. A.C.A. § 7-5-306.

Staff recommends that the SBEC find probable cause exists that Mr. Archie Wright and Ms. Virgil Wright failed to follow failsafe voting requirements under A.C.A. § 7-5-306. Staff recommends an offer be sent to settle this matter with a **Letter of Caution**. This lower level of sanction is appropriate given that the poll workers appear to have sent the voter in question to the correct poll where he was permitted to cast a provisional ballot.

## **B. St. Luke's Polling Site**

The poll workers who initially sent this unnamed voter from the Earle City Hall to St. Luke's would also have violated this same provision for the same reason. However, because the poll workers at the Earle City Hall rotated duties and no poll worker identified themselves as having sent this person from the poll, Staff cannot state with any certainty that a particular poll worker was responsible.

Once the voter returned to the poll, the investigation found that the poll workers properly contacted the County Clerk's office and permitted the individual to vote provisionally as they were informed by the clerk that this person was not registered for this election due to time limitation on voter registrations and transfers.

## **VII. Poll Workers Assisting Voters**

The monitor report indicates that, at the Earle City Hall Polling Site, when it was necessary for a poll worker to assist a voter in the process of voting then only one poll worker would assist the voter.

State law requires that if a voter with a disability requires assistance and elects to be assisted by a poll worker, the poll worker rendering assistance must be observed by a second poll worker. A.C.A. §7-5-310(b).

Staff's investigation found that at least one poll worker, Ms. Johnson, did in fact assist voters in the marking of their ballot without a second poll worker to observe. However, Ms. Johnson states that she requested a second poll worker to come assist her and that no other poll

workers were available due to how busy this poll was. Staff notes the monitor also commented that this poll was under-staffed and was much busier than St. Luke's. It is certainly possible that other poll workers were also doing the same thing; however, this is not reflected in their responses.

Although Staff believes probable cause exists that this event occurred, Staff does not believe it is appropriate to sanction Ms. Johnson as the alternative appears to be that the voters would have been left without poll worker assistance which would also constitute a violation of law.

Therefore, Staff recommends this issue be resolved with a **Letter of Instruction** to the poll workers at Earle City Hall addressing the importance of ensuring two poll workers are present any time a poll worker is assisting a voter in marking his or her ballot. Staff further recommends a **Letter of Instruction** be sent to the CCBEC directing that they reevaluate staffing levels at this polling site.

### **VIII. Keeping an Assistant to Voters Log**

The monitor report also indicates that the poll workers did not keep a log of persons assisting voters. Staff's investigation determined that the poll workers did keep a list of those persons who assisted voters other than poll workers; however, the poll workers did not keep a list of the poll workers who assisted voters. There was some indication that non-poll worker assistance may have been omitted from the list but this was inconclusive.

State law states; "It shall be the duty of the poll workers at the polling site to make and maintain a list of the names and addresses of all persons assisting voters." A.C.A. §7-5-310(b)(5).

The sentence of this subsection governing the assistance of voters, A.C.A. §7-5-310(b)(2), establishes two categories of assistants: "poll workers" and "persons named by the voters." The next sentence establishes the rules for poll workers assisting voters. A.C.A. §7-5-310(b)(3). The following sentence establishes the rules for persons assisting voters which include a limitation that no person other than



election officials may assist more than six voters. A.C.A. §7-5-310(b)(4). The final sentence in this subsection states that it is the duty of the poll workers to keep a list of the names and addresses of “all persons assisting voters.”

The practice of keeping the log only for non-poll worker assistance is intuitive and logical on the part of the poll workers. There is some ambiguity whether the requirements that all persons assisting voters includes poll workers who are assisting voters or refers to the category of assistance described as “persons named by the voters” which is distinct from the second category which is “poll workers.” However, given the phrase “all persons” is used in the provision requiring the keeping of the log, Staff believes this is the better reading of the provision to keep the log for poll workers and non-poll workers. Furthermore, SBEC training has directed poll worker names to be entered on the list as it will provide documentation that two poll workers assisted a single voter.

Therefore, Staff recommends that the poll workers at these polling sites be given a **Letter of Instruction** which will reiterate the importance of keeping the log of assistants to voters for non-poll worker assistance and give instruction that, as a best practice, the poll workers assisting voters should also be noted in this log.

#### REPRODUCTION OF RELEVANT SECTIONS

##### **7-1-103. Miscellaneous misdemeanor offenses -- Penalties -- Definitions. (*Reproduced in Part*)**

(a) The violation of any of the following shall be deemed misdemeanors punishable as provided in this section:

...

(8)

(A) No election official acting in his or her official capacity shall do any electioneering on any election day or any day on which early voting is allowed. Except as provided in subdivisions (a)(8)(B) and (C) of this section, no person shall hand out or distribute or offer to hand out or distribute any campaign literature or any literature

regarding any candidate or issue on the ballot, solicit signatures on any petition, solicit contributions for any charitable or other purpose, or do any electioneering of any kind whatsoever in the building or within one hundred feet (100') of the primary exterior entrance used by voters to the building containing the polling place on election day.

**7-4-107. Duties of county board of election commissioners -- Ballot boxes -- Voting booths -- Appointment of election officers.**

(a) The county board of election commissioners shall proceed to establish and allocate a sufficient number of ballot boxes in each precinct or polling site. The county board shall appoint the requisite number of election officials at each site where voters present themselves to vote to ensure that there is a sufficient number of election officials at each site, based upon the votes in the immediately preceding comparable election.

(b)

(1) It shall be the duty of the county board to select and appoint a sufficient number of election officials for each polling site as provided by subsection (a) of this section and to perform the other duties prescribed not less than twenty (20) days preceding an election.

(2) Each polling site shall have a minimum of two (2) election clerks, one (1) election judge, and one (1) election sheriff. For a regularly scheduled election, all election officials at a polling site shall have completed training under § 7-4-109, and at least one (1) election official at a polling site shall have attended election training coordinated by the State Board of Election Commissioners within twelve (12) months prior to the election. The minority party election commissioner shall have the option to designate a number of election officials equal to one (1) less than the majority of election officials at each polling site, with a minimum of two (2) election officials at each polling site. In the event that the county party representatives on the county board fail to agree upon any election official to fill an election post allotted to the respective party twenty (20) days before the

election, the county board shall appoint the remaining election officials.

(c) The county board shall certify to the county court the per diem of election officials and the mileage of the election official carrying the returns to the county election commissioners' office for allowance.

(d) The county board may permit election officials to work half-day or split shifts at the polls at any election so long as the requisite number of election officials is always present.

**7-5-201. Voter qualification.** *(Reproduced in Part)*

(d)(1) Except as provided in subdivision (d)(2) of this section and subsection (e) of this section, any person desiring to vote in this state shall:

(A) Present verification of voter registration to the election official when appearing to vote in person either early or at the polls on election day; or

(B) When voting by absentee ballot, submit with the ballot verification of voter registration unless the voter is:

**7-5-304. Opening and closing polls -- Time.** *(Reproduced in Part)*

(a) The polls shall be opened at 7:30 a.m., and they shall remain open continuously until 7:30 p.m.

(b) In all counties, when the polls close, all persons who have presented themselves for voting and who are then in line at the polling site shall be permitted to cast their votes.

**7-5-305. Requirements.** *(Reproduced in Part)*

(a) Before a person is permitted to vote, the poll worker shall:

(1) Request the voter to identify himself or herself in order to verify the existence of his or her name on the precinct voter registration list;

- (2) Request the voter, in the presence of the poll worker, to state his or her address and state his or her date of birth;
- (3) Determine that the voter's date of birth and address are the same as those on the precinct voter registration list;
- (4) If the date of birth given by the voter is not the same as that on the precinct voter registration list, request the voter to provide identification as the poll worker deems appropriate;
- (5)
  - (A) If the voter's address is not the same as that on the precinct voter registration list, verify with the county clerk that the address is within the precinct.
  - (B) If the address is within the precinct, request the voter to complete a voter registration application form for the purpose of updating county voter registration record files.
  - (C) If the address is not within the precinct:
    - (i) Verify with the county clerk's office the proper precinct; and
    - (ii) Instruct the voter to go to the polling site serving that precinct in order for his or her vote to be counted;
- (6) If the voter's name is not the same as that on the precinct voter registration list, request the voter to complete a voter registration application form for purposes of updating county voter registration record files;
- (7) Request the voter, in the presence of the poll worker, to sign his or her name, including the given name, middle name or initial, if any, and last name in the space provided on the precinct voter registration list. If a person is unable to sign his or her signature or make his or her mark or cross, the poll worker shall enter his or her initials and the voter's date of birth in the space for the person's signature on the precinct voter registration list;
- (8)

(A) Except as provided in this section, request that the voter present verification of voter registration by providing a document or identification card that meets the requirements of Arkansas Constitution, Amendment 51, § 13, if required by that section

(B) (i) If a voter is unable to present verification of voter registration in the form of a document or identification card required by Arkansas Constitution, Amendment 51, § 13, the poll worker shall:

(a) Indicate on the precinct voter registration list that the voter did not present verification of voter registration by providing a document or identification card required by Arkansas Constitution, Amendment 51, § 13; and

(b) Permit the voter to cast a provisional ballot.

**7-5-306. Procedure when voter's name is not on the precinct voter registration list. (*Reproduced in Part*)**

(a) If the voter's name is not on the precinct voter registration list, the poll worker shall permit the voter to vote only under the following conditions:

(1) The voter identifies himself or herself by stating his or her name and date of birth and is verified by the county clerk as a registered voter within the county and, if the county is divided into more than one (1) congressional district, within the same congressional district;

(2) The voter gives and affirms his or her current residence and the poll worker verifies with the county clerk that the voter's residence is within the precinct;

(3) The voter completes an updated voter registration application form; and

(4) The voter signs the precinct voter registration list.

(b) If the voter is not listed on the precinct voter registration list and the poll worker is unable to verify the voter's registration with the

county clerk and the voter contends that he or she is a registered voter in the precinct in which he or she desires to vote and that he or she is eligible to vote, then the voter shall be permitted to cast a provisional ballot.

**7-5-309. Voting procedure.** *(Reproduced in Part)*

(a) Before giving the voter a ballot, a poll worker shall:

- (1) Initial the back of the ballot;
- (2) Remove the ballot stub; and
- (3) Place the stub into the stub box provided.

(b)(1)(A) Upon receiving his or her ballot, the voter may mark the ballot appropriately at a voting booth, voting machine, or private voting place that allows for the voter to mark the ballot in secrecy so that no one may view how he or she voted.

(B) A voter shall not be allowed more than five (5) minutes to mark his or her ballot.

(2) The voter or the voter's authorized assistant shall deposit the marked ballot into the ballot box provided.

**7-5-310. Privacy – Assistance to disabled voters.** *(Reproduced in Part)*

(a)

(1) Each voter shall be provided the privacy to mark his or her ballot. Privacy shall be provided by the poll workers at each polling site or by the county clerk, if the county clerk conducts early voting, to ensure that a voter desiring privacy is not singled out.

(2)(A) In a county that uses paper ballots, the county board of election commissioners shall:

- (i) Provide voting booths at a polling site; and

(ii) Determine the appropriate number of voting booths at a polling site.

(B) A voting booth shall be:

(i) Constructed to permit the voter to prepare his or her ballot screened from observation;

(ii) Furnished with supplies and conveniences that will enable the voter to prepare his or her ballot; and

(iii) Situated in the plain view of a poll worker.

(C) If a person is not a poll worker and is not casting a ballot, he or she shall not be within six feet (6') of the voting booths, unless:

(i) The person is authorized by an election judge; and

(ii) The person's presence is necessary to keep order or enforce the law.

(b)

(1) A voter shall inform the poll workers at the time that the voter presents himself or herself to vote that he or she is unable to mark or cast the ballot without help and needs assistance in casting his or her ballot.

(2) The voter shall be directed to a voting machine equipped for use by persons with disabilities by which he or she may elect to cast his or her ballot without assistance, or the voter may request assistance with either the paper ballot or the voting machine, depending on the voting system in use for the election, by:

(A) Two (2) poll workers; or

(B) A person named by the voter.

(3) If the voter is assisted by two (2) poll workers, one (1) of the poll workers shall observe the voting process and one (1) may assist the voter in marking and casting the ballot according to the wishes of the voter without comment or interpretation.

(4)

(A) If the voter is assisted by one (1) person named by the voter, he or she may assist the voter in marking and casting the ballot according to the wishes of the voter without any comment or interpretation.

(B) No person other than the following shall assist more than six (6) voters in marking and casting a ballot at an election:

- (i) A poll worker;
- (ii) The county clerk during early voting; or
- (iii) A deputy county clerk during early voting.

(5) It shall be the duty of the poll workers at the polling site to make and maintain a list of the names and addresses of all persons assisting voters.

#### **7-5-502. Application of election laws and penalties.**

All laws of this state applicable to elections where voting is done in any manner other than by machines and all penalties prescribed for violation of these laws shall apply to elections and precincts where voting machines are used insofar as they are applicable.

#### **Arkansas Constitution, Amendment 51 §13. Fail-safe voting -- Verification of voter registration. (*Reproduced in Part*)**

(a) If a voter presents himself or herself at a polling place on the date of an election but no record of his or her voter registration can be located by the judges of the election on the precinct voter registration list, the voter shall be permitted to vote only under the conditions set forth in § 7-5-306 or § 7-7-308.

(b)(1)(A) In order to determine that all who cast a ballot in an election, a runoff election, or a school election in this state are legally qualified to vote in that election, each voter shall verify his or her registration by:

- (i) Presenting to the election official when appearing to vote in person either early or at the polls on election day in an election, a runoff election, or a school election verification of registration in the form of a document or identification card that:



(a) Shows the name of the person to whom the document or identification card was issued;

(b) Shows a photograph of the person to whom the document or identification card was issued;

(c) Is issued by the United States, the State of Arkansas, or an accredited postsecondary educational institution in the State of Arkansas; and

(d) If displaying an expiration date, is not expired or expired no more than four (4) years before the date of the election in which the voter seeks to vote; or

(ii) Submitting with an absentee ballot in an election, a runoff election, or a school election a copy of a document or identification card that complies with the requirements of subdivision (b)(1)(A)(i) of this section.

(B) Documents and identification cards that comply with the requirements of subdivision (b)(1)(A) of this section include without limitation:

(i) A driver's license;

(ii) A photo identification card;

(iii) A concealed handgun carry license;

(iv) A United States passport;

(v) An employee badge or identification document issued by an accredited postsecondary educational institution in the State of Arkansas;

(vi) A United States military identification document;

(vii) A public assistance identification card if the card shows a photograph of the person to whom the document or identification card was issued; and

(viii) A voter verification card under § 7-5-324.

(2)(A) Except as provided in subdivision (b)(2)(B) of this section, if a voter is unable to verify his or her registration when voting in person by presenting a document or identification card that complies with subdivision (b)(1)(A)(i) of this section, the election official shall:

- (i) Indicate on the precinct voter registration list that the voter did not present a required document or identification card; and
- (ii) Permit the voter to cast a provisional ballot and inform the voter of the requirements under subdivision (b)(4) of this section.

(B)

- (i) A person who is a resident of a long-term care or residential care facility licensed by the state of Arkansas is not required to verify his or her registration by presenting a document or identification card that complies with subdivision (b)(1)(A)(i) of this section when voting in person.
- (ii) A person not required to present a document or identification card under subdivision (b)(2)(B)(i) of this section shall provide documentation from the administrator of the facility attesting that the person is a resident of the facility.

## **SBEC Options**

Following the completion of the SBEC investigation, the Board may take the following actions:

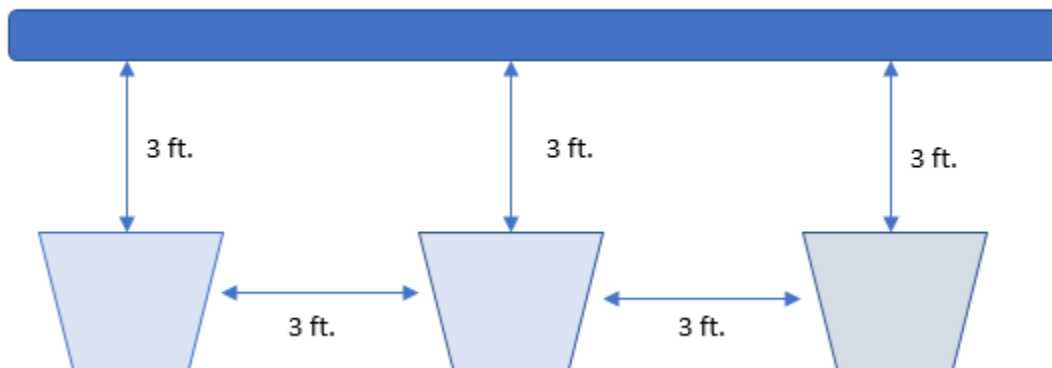
1. The Board may determine that the complaint should be dismissed. SBEC Rules of Procedure for Citizen Complaints §605.
2. The Board may refer the complaint to the proper authority. SBEC Rules of Procedure for Citizen Complaints §605.
3. The Board may determine that a Letter of Instruction should be issued regarding compliance with the election laws in future elections should the Board hold that such a letter is necessary and proper despite the

lack of a probable cause finding. See SBEC Rules of Procedure for Citizen Complaints §605.

4. If, after the investigation, the Board finds that probable cause exists for finding a violation of an election law, the Board may determine that:
  - a. an offer of settlement be issued imposing a fine (\$25-\$1,000) for any violation under Arkansas Code under A.C.A. §7-4-120(e); or
  - b. an offer of settlement be issued for a public Letter of Caution, Warning or Reprimand under A.C.A. §7-4-120(e); and
  - c. that subject to the rejection of the offer of settlement, a full public hearing be held under A.C.A. §7-4-120(b)(6)(C).

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## Exhibit 1: Graphic Interpretation of SBEC Monitor Report Description



## Exhibit 2: Excerpt from Poll Worker McEwen's Interrogatories

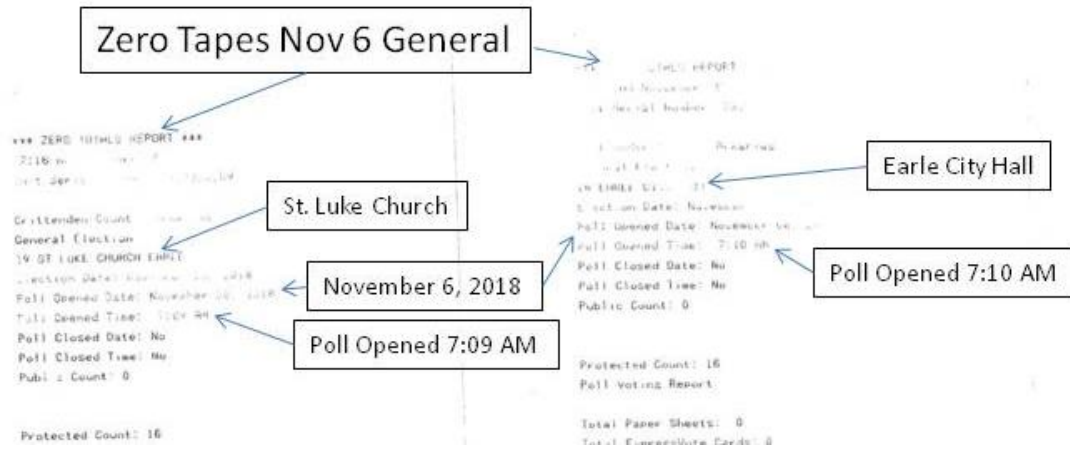
Question #11: Regarding Communications with Voters - Earle City Hall Poll Workers: Did you instruct any voter to skip certain issues on the ballot for any reason? If not, did you hear any of your fellow poll workers give such an instruction to voters who were voting or waiting to vote?

Yes, NO. myself

Question #12: Regarding Communications with Voters - Earle City Hall Poll Workers: Did you make any statements regarding the Casino Amendment and its effect on job opportunities or the minimum wage? If not, did you hear any of your fellow poll workers give such an instruction to voters who were voting or waiting to vote?

Open at 11:00 AM any time  
NO

### Exhibit 3:



### Exhibit 4:

#### LIST OF PERSONS ASSISTING VOTERS

Arkansas Code Annotated § 7-5-310 (b)(5)

Requires poll workers at the polling sites to make and maintain a list of the names and addresses of all persons assisting voters.

#### CRITTENDEN COUNTY

Date of Election Nov 6 / 2018

Name of polling site Earle City Hall

The following officials may assist an unlimited number of voters who request help in marking and casting a ballot:

\*Poll Worker \*County Clerk \*Deputy County Clerk

All other persons may assist no more than 6 voters in marking and casting a ballot at an election.

Name of Persons Assisting Voter	Address of Persons Assisting Voter	Name of Voter Assisted
Edna Pugh	1633 Corn Strong	Odessa Smith

RETURN ELECTION NIGHT

Update: Jan., 2018

Page 1 of 1

# EXHIBIT CC

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 Print  Cancel

## More machines to Sherwood

Evelyn D. Gomez <Egomez@votepulaski.net>

Wed 10/21/2020 9:26 AM

To: Bryan Poe <bpoe@votepulaski.net>; PCEC Mail <pcec@votepulaski.net>; Joshua A. Price <jprice@votepulaski.net>; Kristi M. Stahr <kristi.stahr@votepulaski.net>; Jodie Dildy <jdildy@votepulaski.net>; Amanda Dickens <adickens@votepulaski.net>; Bart Moreland <bmoreland@votepulaski.net>

Bryan,

Sherwood lines this morning are averaging around an hour. Based on constrains with the judge at the location and observing the process-- more machines are needed. Poll books for the location look about right, the backlog is waiting for machines. Can we get more machines out to that location? 3-5 more I think can take care of the demand. There is space for more machines there. Let's get those voter wait times down. An hour in line is way too long.

Evelyn D. Gomez

Chairwoman

Pulaski County Election Commission

(501)340-8383 office

(501)340-6024 fax

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# EXHIBIT DD

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

**THE LEAGUE OF WOMEN VOTERS  
OF ARKANSAS, ARKANSAS UNITED,  
DORTHA DUNLAP, LEON KAPLAN, NELL  
MATTHEWS MOCK, JEFFREY RUST, and  
PATSY WATKINS,**

**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**

**AFFIDAVIT OF BONNIE MILLER  
IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

The undersigned, Bonnie Miller, being first duly sworn, deposes and says:

1. I am over the age of 18 years and competent to make this Affidavit. I have personal knowledge of the facts set forth below unless stated otherwise. This Affidavit shall serve as my direct testimony in this matter.
2. I currently serve as the President of the League of Women Voters of Arkansas (the "League"), which is a plaintiff in the above-titled matter.
3. On December 27, 2021, I appeared for a remote deposition as the League's designee pursuant to Arkansas Rule of Civil Procedure 30(b)(6).
4. During my deposition, counsel for Defendants questioned me regarding the *Government in Arkansas* book that has been published by the League in the past.
5. The *Government in Arkansas* book (the "Book") has not been updated to include information about Act 736 (2021), Act 973 (2021), Act 249 (2021), and Act 728 (2021)

(collectively, the “Challenged Provisions”), as doing so requires time and resources that the League is not currently able to expend.

6. To update the Book, the League must first coordinate with its authors, including Margaret Reed who is a Professor and Electronic Resources and Periodicals Librarian for Ouachita Baptist University in Arkadelphia, Arkansas. Although I am not directly involved in the editing process for updating the Book, I know that there is a significant amount of communication that goes back and forth between the authors and the League during the editing process. Once changes are made to the Book, the League’s Board of Directors must review and approve them before sending to the printer. This is a time-consuming process that requires review and agreement from multiple individuals.
7. The League is concerned about the impact the Challenged Provisions will have on our members.
8. The League believes that Act 736 will burden or disenfranchise some of our members. We have many older members who likely registered to vote years, if not decades, ago, many of whom have disabilities and physical limitations. Given these limitations and the passage of time, the League is concerned that many of these members’ signatures have changed since they registered and that their absentee ballot signatures will be deemed not to match their registration signatures.
9. The League also believes that Act 249’s elimination of the option to sign an affidavit if a voter does not have acceptable identification with them at the polling place will burden or even disenfranchise some of our members. The League has members who live in more rural areas outside city limits. Traveling to polling sites or clerk’s offices within the city limits that are far away from their homes can take a significant amount of time. Some of these members do not have access to transportation or experience physical limitations that

further complicate their voting process and ability to travel longer distances. Given this, the League is concerned that members who forget to bring their identification to the polling place and live far from the clerk's office, who lack transportation, or have physical limitations may not be able to return to the clerk's office with copies of their identification and will not have their ballots counted. And even for those who can, given these limitations, the League is concerned about how burdensome it will be for such members to return to the clerk's office with their identification.

10. The League is likewise concerned that Act 973 will disenfranchise our members by creating different deadlines for absentee ballots. The League's members have expressed confusion over the varying deadlines for the same type of ballot. The League is generally concerned about this confusion because, in our experience, when people are confused about the rules, deadlines, and processes for voting, they are less likely to vote at all or to vote in a way that will allow their ballot to be counted. Additionally, the League is concerned that our members will not fully understand that their absentee ballots are subject to different deadlines and may try to drop off their absentee ballot after the Friday before election day. In that case, the only option remaining to them would be to mail in their ballot, and the League is concerned that there is not enough time between the Friday before the election and election day for their ballot to arrive in time to be counted.

11. Finally, the League believes Act 728 will harm its members. The League has members with disabilities and physical limitations that make it difficult for them to stand in line to vote. They need physical support and assistance from others to stand or wait in line to vote. Additionally, many of our members bring their children or grandchildren with them to vote. Finally, many of our members accompany first-time voters, who are often uncertain about what the voting process is like, to assist and support them. I am personally aware of several

of our members accompanying first-time voters in the last general election. If Act 728 prohibits these members from receiving or offering support and assistance or from bringing dependents with them, the League is concerned that some of our members (or, in the case of members accompanying first-time voters, the voters that they assist) will not cast their ballots.

*Bonnie Miller*

01/20/2022

Bonnie Miller

State of Florida    County of Duval

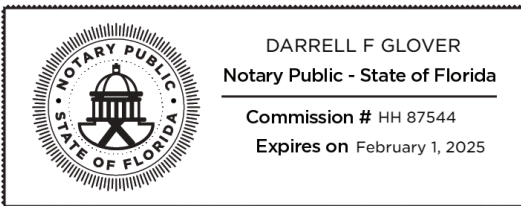
Produced Identification: AR. Driver License

Sworn to before me this 20 day of January 2022.

*Darrell F Glover*

Notary Public    Darrell F Glover

My commission expires 02/01/2025    HH 87544



Notarized online using audio-video communication

# EXHIBIT EE

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

**THE LEAGUE OF WOMEN VOTERS  
OF ARKANSAS, ARKANSAS UNITED,  
DORTHA DUNLAP, LEON KAPLAN, NELL  
MATTHEWS MOCK, JEFFREY RUST, and  
PATSY WATKINS,**

**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**

**AFFIDAVIT OF PLAINTIFF DORTHA DUNLAP  
IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

The undersigned, Dortha Dunlap, being first duly sworn, deposes and says:

1. I am over the age of 18 years and competent to make this Affidavit. I have personal knowledge of the facts set forth below unless stated otherwise. This Affidavit shall serve as my direct testimony in this matter.
2. I am a resident of Springdale, Arkansas.
3. I am a plaintiff in the above-entitled matter. On December 7, 2021, I appeared for a remote deposition as part of the ongoing litigation in the above-entitled matter.
4. During the course of my deposition, counsel for Defendants questioned me regarding certain allegations in my complaint related to my driver's license and Act 249.

5. I testified that I have a valid Arkansas driver's license that does not expire until the year 2026. I also testified that because I rarely ever drive, I may not renew my driver's license once it expires in 2026.
6. Since my deposition, I have had the chance to look at my driver's license to confirm the expiration date. My Arkansas driver's license expires August 7, 2025. It is highly likely that I will not renew my driver's license once it expires in 2025.
7. I plan to vote in future elections regardless of whether I renew my license. If I do not renew my driver's license, I would rely on the affidavit fail-safe to cast a provisional ballot.

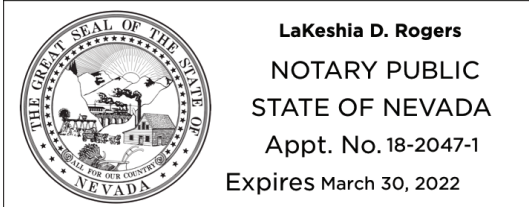
*Dortha Dunlap*

Dortha Dunlap  
Plaintiff

State of Nevada County of Clark

Sworn to before me this 20th day of January 2022.

*[Signature]*  
Notary Public



My commission expires 03/30/2022

Notarized online using audio-video communication