

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
FIFTH DIVISION

THE LEAGUE OF WOMEN VOTERS
OF ARKANSAS and ARKANSAS UNITED

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

DEFENDANTS' MOTION TO STAY, PENDING APPEAL;
ALTERNATIVE MOTION FOR EXTENSION OF TIME
AND NEW TRIAL DATE

Defendants, by and through their attorneys, Attorney General Leslie Rutledge and Senior Assistant Attorney General Kat Hodge-Guest, submit this Motion to Stay, pending Interlocutory Appeal. Alternatively, Defendants seek a New Trial date and related scheduling order:

1. Plaintiffs initiated this cause of action, seeking declaratory and injunctive relief, challenging four Acts—Act 736, 973, 249, and 728 of the 93rd General Assembly. Defendants assert that Sovereign Immunity bars this case of action in its entirety.

2. On February 28, 2022, this Court entered an order, denying Defendants Motion for Summary Judgment.

3. Arkansas Rule of Appellate Procedure 2(a)(10) permits an appeal from a circuit court to the Arkansas Supreme Court from an order deny the State Sovereign Immunity. Ark. R. App. P. 2(a)(10).

4. Importantly, Arkansas Rule of Civil Procedure 62 provides that when an appeal is taken, the appellant may obtain a stay subject to certain exceptions, which are not applicable here. When the appeal is taken by the State of Arkansas or an officer of a state agency, no bond or other security is required. Ark. R. Civ. P. 62(d) & (e).

5. The State Defendants request a stay of these proceedings, pursuant to Ark. R. Civ. P. 62(d) & (e). Defendants seek appellate review of the Court's order, denying their Motion for Summary Judgment, which implicates several important legal issues, including the State's Sovereign Immunity, before this matter proceeds.

6. A stay of this matter is imperative given the court's order, expressing uncertainty about the legal standard, in this case. Defendants maintain that there are no genuine disputes of fact concerning the appropriate legal standard the court should employ. In resolving the issue of Sovereign Immunity, on appeal, the appellate court can determine the legal standard applicable to each of the challenged Acts. Defendants maintain that they are entitled to Sovereign Immunity under any legal standard. Nevertheless, the appellate court's determination of the legality of the State's

conduct, for purposes of Sovereign Immunity, will essentially entail a determination of the appropriate legal standard.

7. Contemporaneous with this Motion to Stay, Defendants have filed a Notice of appeal, requesting that the electronic record be transmitted pursuant *In re Acceptance of Records on Appeal in Electronic Format and Elimination of the Abstracting and Addendum Requirements*, 2019 Ark. 213.

8. Defendants have also contacted the court reporter in order to make arrangements for the transcript of the February 28, 2021 hearing.

9. Additionally, and/ or in the alternative, Defendants request an extension of time to submit witness and exhibit lists and request a new trial date.

10. This case was initiated in May 2021. There are fourteen named parties and three expert witnesses.

11. Prior to the undersigned's assignment to this case, the parties conducted discovery, including 14 depositions, written discovery, and exchanged thousands of documents and other responsive materials. The extensive nature of the record in this case is memorialized in several pleadings, including the Court's February 18, 2022 order denying the Motion for Summary Judgment.

12. Indeed, Plaintiffs have continued to submit voluminous document productions, up to and including February 25, 2022.

13. The Plaintiffs in this case are represented, collectively, by eight separate attorneys across four separate law firms.

14. The Defendants in this case have a single, newly assigned attorney.

15. Since the Court's February 11, 2022 status hearing, the undersigned has had several competing deadlines, including expert depositions and devoting significant time preparing for oral arguments before the Arkansas Supreme Court. The arguments were scheduled for February 24, 2022.¹

16. The Defendants are severely prejudiced by the lack of sufficient time to prepare this case for trial.

17. In the two weeks since the court's February 11, 2022 hearing, the undersigned has not had sufficient time to review the thousands of documents filed and/or exchanged in this matter. The undersigned has also had insufficient time to review Plaintiffs' submitted exhibits, which include 77 trial exhibits and multiple deposition transcripts.

18. Defendants also note that their original counsel of record and one of the legal assistants previously assigned to this matter are no longer employed at the Office of the Attorney General. Defendants current counsel

¹ The Arkansas Supreme Court cancelled argument shortly before arguments were scheduled to be heard on morning of February 24, 2022.

and current administrative professional are new to this case, had no prior involvement in the case, and require sufficient time to prepare this case for trial.

19. Defendants submit that this case should be stayed while the issue of Sovereign Immunity is addressed on appeal. In the alternative, Defendants request that this court enter a new scheduling, providing their new counsel sufficient time to prepare this case for trial, including submitting pretrial materials and motions.

Wherefore, Defendants respectfully request a stay of these proceedings, pending an Interlocutory Appeal to the Arkansas Supreme Court; alternatively, Defendants move for a new scheduling order.

Respectfully submitted,

LESLIE RUTLEDGE
Attorney General

By: /s/ Kat Hodge
Kat Hodge
Ark Bar No. 2003100
Senior Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
Phone: (501) 682-1307
Fax: (501) 682-2591
Email: KaTina.Guest@ArkansasAG.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I, Kat Guest, hereby certify that on February 28, 2022, I electronically filed the foregoing with the Clerk of the Court using the eFlex system and parties will be notice electronically.

/s/ Kat Hodge
Kat Hodge

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