

CV-22-190

IN THE SUPREME COURT OF ARKANSAS

JOHN THURSTON, *et al.*,

APPELLANTS

THE LEAGUE OF WOMEN VOTERS
OF ARKANSAS, *et al.*,

APPELLEES

**APPELLEES' EMERGENCY MOTION FOR ACCELERATED
PROCEEDINGS AND PETITION FOR WRIT OF CERTIORARI TO
COMPLETE THE RECORD**

Appellees, for their Emergency Motion for Accelerated Proceedings and Petition for Writ of Certiorari to Complete the Record (the “Motion”) pursuant to Rules 6-1 and 3-5 of the Rules of the Arkansas Supreme Court and Court of Appeals, state:

PROCEDURAL BACKGROUND AND INTRODUCTION

The Court’s opinion in *Thurston v. League of Women Voters of Ark.*, 2022 Ark. 32, 639 S.W.3d 319, summarizes the claims and procedural history of this litigation. Appellees allege Acts 736, 973, 249, and 728 (the “Challenged Provisions”) are unconstitutional. After a full trial, and carefully considering the evidence and arguments, the Circuit Court entered judgment on all claims permanently enjoining Appellants from enforcing the Challenged Provisions. Shortly thereafter, this Court stayed the injunction. Merits briefing has not begun

because the trial transcript has not been lodged. Because fundamental rights are at issue, and election-related deadlines are rapidly approaching, Appellants respectfully move this Court for emergency accelerated consideration and petition for a writ of certiorari to complete the record on an accelerated basis, within one calendar week of the issuance of the writ.

After announcing its intention to do so in open court on March 18, the Circuit Court entered its permanent injunction on March 24, 2022, and Appellants ordered the trial transcript and filed their Notice of Appeal the same day. On March 30, 2022, Appellants filed a partial record in this Court containing almost the entire record except for the trial transcript. The next day, Appellants filed an emergency motion to stay the permanent injunction, which this Court granted the following day, April 1, 2022. Since then, Appellees have attempted to work with the court reporter to expedite the transcript due to the urgency of the issues on appeal and the importance of resolving those issues before upcoming elections.

REQUEST TO ACCELERATE THE COMPLETE RECORD

Accelerated consideration is imperative and in the public's interest because the Challenged Provisions impair Appellees' and Arkansans' constitutional rights and access to the franchise. Given this year's impending elections, the necessity for timely resolution of this appeal increases in importance as each election-related

deadline nears and passes. Delay in lodging the record will deny Appellees and many other Arkansans the ability to cast their ballot or otherwise exercise their constitutional rights to speech and assembly as enshrined in the Arkansas Constitution. Indeed, if the complete record is not accelerated, any meaningful relief will likely be pushed beyond even the November 2022 general election, leaving Appellees irreparably prejudiced and harmed.¹ The violation of fundamental rights, even for minimal amounts of time, constitutes irreparable harm. *See Muntaqim v. Hobbs*, 2017 Ark. 97, 4, 514 S.W.3d 464, 468 (2017) (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (violation of First Amendment rights constitutes irreparable harm); *see also Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) (same); *see also League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (“[O]nce the election occurs, there can be no do-over and no redress. The injury to these voters is real and completely irreparable if nothing is done to enjoin this law.”)).

¹ Once the record is complete, Appellees will seek expedited briefing and consideration to allow for this Court’s decision before absentee ballots are printed and distributed in September 2022 for the November 2022 general election.

Expediting the trial transcript and complete record would neither prejudice nor harm the parties and is essential to afford all parties sufficient time to brief the issues and the Court the necessary time for deliberation, as often occurs in election cases. *Compare Walker v. McCuen*, 318 Ark. 389, 389, 886 S.W.2d 577 (1994) (granting motion for expedited consideration and briefing two weeks before the general election), *with McCuen v. Harris*, 318 Ark. 522, 523, 891 S.W.2d 350, 350 (1994) (denying motion for expedited consideration where parties filed their motion and opening brief just five days before the general election and explaining the Court could not order “a reasonable briefing schedule which would not be prejudicial to either party” and “give [the] Court the time needed for deliberation” as it had done in *Walker v. McCuen*). Further, accelerating the complete record will allow for a decision that permits election officials sufficient time to prepare for impending elections based on the outcome of this appeal. *See Stillely v. Bradley*, 342 Ark. 274, 274-75, 27 S.W.3d 436-37 (2000).

Appellants previously moved for an expedited briefing schedule on appeal of this matter, recognizing that “[e]lection officials, including the Appellants, must have sufficient time to know what election laws will be in effect” before an upcoming election. Motion to Expedite Appeal and to Impose Expedited Briefing

Schedule ¶ 6, *Thurston v. League of Women Voters of Ark.*, No. 2021-581 (Ark. 2022).

REQUEST FOR THE WRIT TO COMPLETE THE RECORD

Based on these time-sensitive and critically important issues, time is of the essence in this appeal. Rule 3-5 generally calls for the return of the writ to complete the record within thirty days, but in this case, trial ended more than six weeks ago, and Appellees have been unable to prompt an expedited trial transcript through efforts to work with the court reporter since the partial record was lodged. Timely resolution of this appeal demands that the record be completed as soon as possible. Appellees therefore respectfully request that this Court issue its writ directing the court reporter to complete, certify and deliver the trial transcript to the Circuit Clerk within one calendar week of the issuance of the writ.

REQUEST FOR EXPEDITED CONSIDERATION

Appellees have notified Appellants of their intention to file this Motion and respectfully request that the Court expedite Appellants' response time to this Motion to noon on May 4, 2022 to enable time for expedited ruling on the petition.

WHEREFORE, Appellees respectfully request that the Court grant expedited consideration, issue the writ to complete the record for return within one calendar week from issuance, and grant all other just and proper relief.

Respectfully submitted,

/s/ Jess Askew III

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CERTIFICATE OF SERVICE

I, Jess Askew III, hereby certify that I served the Clerk of Court with the foregoing on this 2nd day of May 2022, via the e-flex electronic filing system, which shall send notice to all counsel of record.

/s/ Jess Askew III

Jess Askew III