

Tendered
May 6, 2022

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

Appellees, for their reply supporting 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, respectfully state:

Appellees filed their Motion because the lack of a complete trial transcript threatens Arkansans’ fundamental rights in upcoming elections. Simply put, without expediting the transcript and briefing, there may not be time for this Court to resolve this case before the November general elections. Despite previously representing, to the Circuit Court, that a decision needed to issue with sufficient time to know what election laws will be in effect, now, having successfully obtained a stay of the Circuit Court’s injunction, Appellants seek to delay this Court’s decision, potentially

beyond the November general election. And in opposing the Motion, the Office of the Solicitor General displays a basic misunderstanding of Arkansas appellate process and the relevant issue. The question here is not, as Appellants argue, whether Appellants—and only Appellants—may lodge a record in this Court: a partial record has already been lodged, which is why this Court had jurisdiction to grant the existing stay. Nor is this a Motion for Rule on the Clerk or a motion under R. App. P.—Civ. 5, as Appellants argue up until page 7 of their Opposition. Indeed, the Opposition only addresses the actual Rule at issue, Supreme Court Rule 3-5—which allows Appellees’ petition to complete the record—in a single paragraph, after focusing on those irrelevant points.

Rule 3-5 allows this Court to order the Clerk to issue a writ of certiorari to the court reporter to complete the record once a partial record is lodged, as is the case here. Rule 3-5 does not restrict this relief to Appellants; either side may seek the relief. There are cases, such as this one, where Appellees may seek to expedite the complete the record and Appellants do not. Appellants clearly do not want to expedite the complete record, or expedite this appeal, now that they have stayed the permanent injunction pending appeal and election season is upon us. But the need to complete the record and expeditiously complete briefing is even more pressing in light of the Court’s upcoming summer recess and the September deadline to print and distribute ballots.

To support their delay tactics, Appellants misstate what has transpired in the month since the Circuit Court enjoined the four challenged election laws. Contrary to Appellants' statement to this Court that Appellees have "done nothing," Opp. at 1, Appellants know fully well that Appellees have made numerous efforts to expedite proceedings, including attempting to contact the court reporter and requesting that Appellants stipulate to an expedited briefing schedule—a request Appellants refused.

When complete, the trial transcript will demonstrate that during the four-day trial, in which Appellants did not offer a single exhibit and presented only their own corporate designees as witnesses, Appellants could not justify the four voter suppression laws at issue. To the contrary, one of the suppressive laws passed without the Governor's signature, and Appellants' witness testified that the 2020 general election in Arkansas was successful and free from the legislative fig leaf of "fraud."

Appellants' Opposition makes it clear that they hope to "win" this appeal, not on the merits, but instead by running down the clock before the November general election. If successful, these delay tactics will come at the expense of tens of thousands of Arkansas voters whose rights the Circuit Court vindicated, after careful consideration, and in light of four days of testimony and other evidence. This dilatory motive is especially transparent in Appellants' argument that, even if a writ

is ordered and the transcript is completed, Appellees cannot lodge the record. Opp. at 1, 4-6. In other words, Appellants argue that a writ would not be helpful here because even if the record was complete, Appellants would refuse to file it before the deadline to ensure delay.

Appellees seek to expedite the lodging of the trial transcript for this Court's consideration of the merits. Appellants plainly seek to delay that process, again. Before the Solicitor General appeared in this case, Appellants sought to delay this Court's consideration of the merits at every juncture, by filing successive interlocutory appeals on the same theory, even after this Court had rejected their same arguments mere weeks before. The constant thread in Appellants' appeals before and after trial is a desire to avoid dealing with the merits of the voter suppression laws in this case.

Appellants conspicuously fail to mention the consequence of their desired delay. If the court reporter is not ordered to complete the transcript here on an expedited basis so the full record can be lodged an expedited briefing schedule can be ordered, there will almost certainly not be time for a resolution on the merits

before the November 2022 general election.¹ And the consequences of such a result make the necessity of the requested writ clear.

The consequences of not granting the Motion and expediting proceedings are potentially very significant. If this Court concludes that the Circuit Court was right in its nearly ninety-page memorandum enjoining the four laws on the grounds that they abridge and deny various fundamental rights, including the right to suffrage, not having that decision from this Court before absentee ballots for the general election are printed and mailed in September will lead to the violation of the fundamental rights of tens of thousands of Arkansas voters in the November 2022 general election. 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); *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

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.

is real and completely irreparable if nothing is done to enjoin this law.”). But even if this Court were to ultimately reverse the decision below, the only consequence of granting the Motion will be that the court reporter was ordered to expedite a four-day hearing transcript.

The voter suppression laws at issue are anathema in a democracy, because, as demonstrated at trial, they infringe on the right to vote in a way that especially burdens the aged, infirm, and impoverished citizens of Arkansas. The need to timely resolve this case on the merits exists as much today as it did two months ago. For Appellants and the Office of the Solicitor General to seek to slow this appeal now that they have a stay, and thereby pit themselves against the voters of Arkansas, whose rights to vote in upcoming elections are at stake, is a disservice to us all.

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 6th 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

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