

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION**

MISSOURI PROTECTION & ADVOCACY )  
SERVICES, VOZKC, Susana Elizarraraz, )  
Manuel Rey Abarca IV, and Barbara )  
Sheinbein; )

Plaintiffs, )

v. )

Case No. 2:22-CV-04097

JOHN R. ASHCROFT, in his official )  
capacity as the Missouri Secretary of State; )  
Kansas City Board of Election )  
Commissioners; St. Louis County Board of )  
Election Commissioners; and Boone County )  
Clerk; )

Defendants. )

**PLAINTIFFS' RESPONSE TO COURT ORDER  
DIRECTING BRIEFING REGARDING A STAY**

In response to this Court's order that the parties brief whether this case should be stayed pending the Eighth Circuit's resolution of *Arkansas United, et al. v. John Thurston, et al.* (No. 22-2918) (8th Cir. 2022) [Doc. 50], Plaintiffs Missouri Protection and Advocacy Services ("Mo P&A"), VozKC, Susana Elizarraraz, Manuel Rey Abarca IV, and Barbara Sheinbein take the position that a stay is appropriate under the circumstances but ask that the Court permit Plaintiffs to file a motion for preliminary injunction if Plaintiffs determine one is warranted during the pendency of the stay.

1. Plaintiffs filed suit against Defendants on June 22, 2022, alleging that Missouri statutes Mo. Rev. Stat. §§ 115.445.3, 115.635.8, 115.115.5, 115.447.2(2) and 115.291.1 (the "voter assistance restrictions") violate and conflict with Section 208 of the federal Voting Rights Act of

1965 (hereinafter “VRA”) and Article VI, Paragraph 2 of the U.S. Constitution (also known as the Supremacy Clause).

2. In this case, Plaintiffs seek a declaration that the voter assistance restrictions, which prohibit voters from choosing an assistor who has already helped another voter outside of their immediate family during an election, are unconstitutional and violate the VRA. Plaintiffs also seek injunctive relief directing Defendants and all persons acting in concert with them to refrain from denying voters who qualify for assistance under the VRA the assistor of their choice even if that assistor has already helped another voter.

3. Defendants Kansas City Board of Election Commissioners, St. Louis County Board of Election Commissioners, and the Boone County Clerk filed their respective Answers to Plaintiffs’ complaint. [Doc. 19, 32, 35].

4. On August 23, 2022, Defendant John R. Ashcroft, in his official capacity as the Missouri Secretary of State, filed a motion to dismiss for failure to state a claim. [Doc. 33, 34]. This motion has been fully briefed by the parties. [Doc. 38, 49].

5. On October 12, 2022, the Court ordered the parties “to brief whether this case should be stayed pending resolution of *Arkansas United, et al. v. John Thurston, et al.*, No. 22-2918 (8th Cir. 2022).” [Doc. 50].

6. In *Arkansas United v. Thurston*, the plaintiffs challenged provisions of the Arkansas Election Code that prohibit voters from choosing an assistor who has already helped six other voters during an election. On August 19, 2022, the Arkansas district court concluded that Section 208 of the VRA preempts the Arkansas six-voter limit and its associated criminal provisions, but that it did not preempt the tracking requirement found in the Arkansas Election Code. *See Ark. United v. Thurston*, No. 5:20-CV-5193, 2022 WL 3584626 (W.D. Ark. Aug. 19, 2022). State defendants in that case appealed the district court's decision and the case is currently before the United States Court of Appeals for the Eight Circuit.

7. Because the claims raised in *Arkansas United v. Thurston* are similar to the claims raised in this case, Plaintiffs do not oppose this case being stayed pending the Eight Circuit's resolution of *Arkansas United v. Thurston*.

8. Plaintiffs do not oppose the current scheduling order and all pending discovery deadlines [Doc. 26] being stayed until the Eight Circuit issues its opinion in *Arkansas United v. Thurston*.

9. Plaintiffs, however, respectfully request that the Court permit Plaintiffs to file a motion for preliminary injunction if Plaintiffs later determine a preliminary injunction is warranted pursuant to Fed. R. Civ. Proc. 65(a) while the *Arkansas United v. Thurston* case is pending.

10. Given the uncertainty of when the Eighth Circuit will issue a final decision in *Arkansas United v. Thurston*, there are several future elections in Missouri where Plaintiffs could face irreparable harm.

11. Therefore, while this case is stayed, Plaintiffs would like to preserve the right to file a motion for a preliminary injunction if warranted during the pendency of a stay.

WHEREFORE, Plaintiffs do not oppose a stay of this case and all scheduling deadlines pending the resolution of *Arkansas United v. Thurston*, but ask that the Court permit Plaintiffs to file a motion for preliminary injunction if Plaintiffs determine one is warranted during the pendency of the stay.

October 24, 2022

Respectfully submitted,

/s/ Susana Sandoval Vargas

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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was filed electronically and served by operation of the CM/ECF system on all counsel of record on October 24, 2022.

/s/ Susana Sandoval Vargas  
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