

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION**

ARKANSAS UNITED and L. MIREYA REITH

Plaintiffs,

v.

JOHN THURSTON, in his official capacity  
as the Secretary of State of Arkansas,  
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, and RENEE  
OELSCHLAEGER, BILL ACKERMAN, MAX  
DEITCHLER, and JENNIFER PRICE in their official  
capacities as members of the Washington County Election  
Commission, RUSSELL ANZALONE, ROBBYN  
TUMEY, and HARLAN STEE in their official capacities  
as members of the Benton County Election Commission,  
and DAVID DAMRON, LUIS ANDRADE, LEE WEBB,  
in their capacities as members of the Sebastian County  
Election Commission, and MEGHAN HASSLER in her  
capacity as Election Coordinator for the Sebastian County  
Election Commission

Defendants.

Case No. 5:20-cv-05193-TLB

**PLAINTIFFS' RESPONSE TO STATE DEFENDANTS' MOTION TO  
CLARIFY AND REQUEST FOR EXPEDITED CONSIDERATION**

Plaintiffs Arkansas United and L. Mireya Reith (the "Plaintiffs") hereby file this response to State Defendants' Motion to Clarify and Request for Expedited Consideration.

**Introduction**

On August 19, 2022, this Court concluded that Section 208 of the federal Voting Rights Act (VRA) preempted the six-voter assistance restriction (§ 7-5-310(b)(4)(B) of the

Arkansas Code), but that it did not preempt the tracking requirement found in § 7-5-310(b)(5) of the Arkansas Code. Dkt. 168 at 4. The Court further concluded that Section 208 of the VRA also preempted § 7-1-103(a)(19)(C) and 7-1-103(b)(1) of the Arkansas Code to the extent that they are used to enforce criminal penalties for violations of the six-voter assistance restriction. *Id.* at 38. As a result, the Court permanently enjoined “State and County Defendants, their employees, agents, and successors in office, and all persons acting in concert with them,” from enforcing the six-voter assistance restrictions, “or otherwise engaging in any practice that limits the right secured by § 208 of the Voting Rights Act based on the number of voters any individual has assisted, and from enforcing §§ 7-1-103(a)(19)(C) and 7-1-103(b)(1) to the extent they are used to enforce criminal penalties for violations of § 7-5-310(b)(4)(B).” *Id.*

The Court took into consideration the upcoming election and limited its injunctive relief for the 2022 General Election. The Court recognized that State and County Defendants may have already produced training materials and conducted trainings for the 2022 General Election and did not require Defendants to conduct new, modified trainings or produce an updated training manual for the 2022 General Election. Dkt. 168 at 38. Instead, the Court ordered State and County Defendants only to “inform their staff to cease enforcement of § 7-5-310(b)(4)(B) in advance of the 2022 General Election.” *Id.* The Court further ordered State and County Defendants “to use an updated Assisted Voter Card in all future elections that removes any reference to the six-voter limit at § 7-5-310(b)(4)(B).” *Id.*

On August 30, 2022, State Defendants filed a motion for clarification requesting that the Court modify its August 19, 2022 order. First, State Defendants ask the Court to modify its order to “confirm [that] the order is not intended to bind the election administration of the

72 non-party counties for the 2022 General Election.” Dkt. 170 at 5. Second, State Defendants ask the Court to modify its order to absolve them of the responsibility to promulgate an Assisted Voter Card and from liability for non-party counties' "non-use of an appropriate Assisted Voter Card during the 2022 General Election." *Id.* at 6.

Plaintiffs respectfully request that the Court deny State Defendants' motion. First, State Defendants' motion, styled a "motion for clarification" without reference to any Federal Rule of Civil Procedure, is procedurally improper. Second, because the Court's injunction is appropriately limited, and not mistaken or vague, there is no need to "clarify" or otherwise amend the order. If the Court is inclined to modify its injunction, the modification can be limited as described below.

### **Argument**

#### **A. State Defendants' Motion is Procedurally Improper**

To the extent State Defendants seek a modification of the Court's order, their request should have been filed as a motion to alter or amend the judgment under Fed. R. Civ. P. 59, or as a motion for relief from judgment under Fed. R. Civ. P. 60(b).

Fed. R. Civ. P. 60 provides that the Court may grant relief for a number of reasons, including but not limited to "mistake, inadvertence, surprise, or excusable neglect," "newly discovered evidence," "fraud," or "any other reason that justifies relief." Fed. R. Civ. P. 60(b). Fed. R. Civ. P. 59 provides that, upon motion, a court may "amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment." Fed. R. Civ. P. 59(a) (2).

Because State Defendants have failed to explain how their request for the Court to modify its order and injunction is warranted by either Rule 59 or 60, Plaintiffs respectfully

request that this Court deny State Defendants' motion.

B. State Defendants Identify no Flaw in the Court's Injunction That Requires Modification

The Court's order is plain with respect to State Defendants. For the 2022 General Election, State Defendants are required to inform their staff and volunteers not to enforce the 6-voter assistance limit. State Defendants concede as much, and also concede that the Court's order does not enjoin the non-party counties:

[T]he State Defendants understand the Court's order merely to require them to instruct their employees and volunteers not to enforce the six-voter limit for the 2022 General Election. (Doc. 168 at 38). The State Defendants do not read the Court's order to affect the 72 Arkansas counties that are not parties to this suit as to the 2022 General Election.

Dkt 170 at 4.

Nevertheless, State Defendants ask the Court to modify its order to "confirm [that] the order is not intended to bind the election administration of the 72 non-party counties for the 2022 General Election." Dkt. 170 at 5. To the extent State Defendants ask the Court merely to repeat what is already in its order, such modification is unnecessary. To the extent State Defendants ask the Court to make clear that State Defendants do not directly administer local elections, such modification is also unnecessary because neither the Court nor the parties contend that State Defendants directly administer local elections. *See, e.g.* Dkt. 168 at 25. ("The State Defendants conduct trainings, provide guidance, and enforce penalties for violations of the six-voter limit."), Dkt. 79 at 5. ("The State Election Board is responsible for, among other duties, providing statewide guidance and training to election officers and county election commissioners), and Dkt. 170 at 3. ("the State Board's role is to assist them by training their representatives on election laws and procedures and investigating any post-election complaints that are received.").

State Defendants concede that only a "broad[]" reading of the Court's order would make them responsible for enforcement of the 6-voter assistance restriction by non-party counties in

the 2022 General Election. Dkt. 170 at 1, 4. Nevertheless, if State Defendants seek clarification on what they should communicate to the counties in advance of the 2022 General Election, Plaintiffs respectfully suggest that the Court modify its order to require State Defendants to send a memo to all counties, as is routine, informing the counties of the Court's ruling and the forthcoming changes in guidance and training materials after the 2022 General Election. State Defendants normally advise county election officials of changes in the law *See e.g.* Ex. 1 (State Board of Election Commissioners' Memorandum on 2021 Election Related Legislation Summaries), and the circumstances here warrant similar action, which can be ordered by the Court.

A memo to counties is not burdensome on State Defendants. The Arkansas State Board of Election Commissioners (The "Board"), in past years, has issued memoranda to all county board of election commissioners providing updates on relevant changes in law. Ex. 2 (Board Memorandum on 2017 Legislative Summaries) and Ex. 1 (Board Memorandum on 2021 Election Related Legislation Summaries). State Defendants certainly have the expertise and resources to issue a similar memorandum to all county board of election officials informing them of the Court's ruling and forthcoming guidance and training materials.

The Board is in the best position to notify Arkansas local election officials that this Court has concluded that the six-voter assistance restriction is preempted by the federal Voting Rights Act. First, the Board has broad statutory authority to administer and ensure compliance with Arkansas election law. Ex. 3 (Shults Dep.) Tr. 25:5-23, 49:7-50:4; 53:16-25. Second, the Board has monitored compliance by local election authorities with the voter-assistance restrictions. *Id.* (Shults Dep.) Tr. 27:8-29:2 & 30:12-19. Third, the Board creates resources for county election boards "to educate and instruct the election officials for the counties on how to conduct [an]

election specific with the requirements of Arkansas law.” *Id.* (Shults Dep.) Tr. 42:4-9.

A memorandum from State Defendants will have the beneficial effect of reducing any possible confusion of local election officials following media reports of the Court's ruling. *See, e.g.* Thompson, Doug, *Court tosses Arkansas law Limiting Election Helpers*, August 23, 2022, Northwest Arkansas Democrat Gazette, available at <https://www.nwaonline.com/news/2022/aug/23/court-tosses-arkansas-law-limiting-election/>, (last visited on 09/03/2022). As the Court noted, “the six-voter limit is not a voter-facing policy and its primary front-end enforcement mechanisms are the tracking requirement—which may stay in place.” *See* Dkt at 38. This Court found “no cause for concern that election officials or voters will be confused by the Court’s enjoinder of the six-voter limit,” and Plaintiffs agree. *See* Dkt. at 39. Thus, if the Court is inclined to clarify its order regarding State Defendants' obligations in the 2022 General Election, Plaintiffs respectfully suggest the Court order State Defendants to issue a memorandum to counties.

C. The Court’s Order Does not Require State Defendants to Promulgate Assisted Voter Cards

The record, and the Court's Memorandum Opinion and Order, reflect that Washington County uses an Assisted Voter Card to implement the voter assistance provisions of the Arkansas Code. Dkt. 168 at 8, 11, 25, 27, and 28; and Dkt. 138 at 7.<sup>1</sup> The Court ordered that State and County Defendants “must use an updated Assisted Voter Card in all future elections that removes any reference to the six-voter limit.” Dkt. 168 at 38; *id.* at fn 15. Accordingly, Washington and Benton County Defendants must modify their Assisted Voter Cards for the 2022 General Election and all future elections. To the extent that Sebastian County Defendants also

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<sup>1</sup> In discovery, Plaintiffs also received an Assisted Voter Card from Benton County. Exh. 4. (Benton County Assisted Voter Card)

use an Assisted Voter Card, they must also modify the cards according to the Court's order.

Plaintiffs do not read the Court's order to require State Defendants to promulgate an Assisted Voter Card. However, to the extent the Court grants State Defendants' request to modify its language that "The State and County Defendants are FURTHER ORDERED to use an updated Assisted Voter Card in all future elections," Plaintiffs respectfully request that the Court modify that language only to say "Any Assisted Voter Card promulgated or used by State or County Defendants must not include language stating a 6-voter limit on assistance.

### **Conclusion**

For the foregoing reasons, Plaintiffs respectfully request that the Court deny State Defendants' motion to clarify, or if the Court grants the motion, provide the relief suggested by Plaintiffs as described above.

DATED: September 3, 2022

Respectfully submitted,

s/ Susana Sandoval Vargas  
Susana Sandoval Vargas

Lawrence Walker  
AR Bar No. 2012042  
John W. Walker, P.A.  
1723 Broadway  
Little Rock, AR 72206  
Tel: (501) 374-3758  
Facsimile: (501) 374-4187  
[lwalker@jwwlawfirm.com](mailto:lwalker@jwwlawfirm.com)

MEXICAN AMERICAN LEGAL  
DEFENSE AND  
EDUCATIONAL FUND

Griselda Vega Samuel  
IL State Bar No. 6284538  
Francisco Fernandez del Castillo

NY State Bar No. 977575  
Susana Sandoval Vargas  
IL State Bar No. 6333298  
11 E. Adams, Suite 700  
Chicago, IL 60603  
Phone: (312) 427-0701  
Facsimile: (312) 427-0691  
Email: [gvegasamuel@maldef.org](mailto:gvegasamuel@maldef.org)  
Email: [ffernandez-delcastillo@maldef.org](mailto:ffernandez-delcastillo@maldef.org)  
Email: [ssandovalvargas@maldef.org](mailto:ssandovalvargas@maldef.org)

Nina Perales  
TX State Bar No. 24005046  
110 Broadway, Suite 300  
San Antonio, Texas 78205  
Phone: (210) 224-5476  
Facsimile: (210) 224-5382  
Email: [nperales@maldef.org](mailto:nperales@maldef.org)

ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I hereby certify that on September 3, 2022, I electronically filed this Response to State Defendants' Motion to Clarify and Request for Expedited Consideration with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the Court's electronic filing system.

/s/ Susana Sandoval Vargas  
Susana Sandoval Vargas  
Attorney for Plaintiffs