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

ARKANSAS UNITED
and L. MIREYA REITH **PLAINTIFFS**

V. **CASE NO. 5:20-CV-5193**

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; 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; DAVID DAMRON, LUIS ANDRADE, and LEE WEBB, in their official capacities as members of the Sebastian County Election Commission; and MEGHAN HASSLER, in her official capacity as Election Coordinator for the Sebastian County Election Commission **DEFENDANTS**

ORDER GRANTING MOTION TO CLARIFY

Before the Court is the Motion to Clarify (Doc. 170) filed by Arkansas Secretary of State John Thurston and the Arkansas State Board of Election Commissioners ("the State Defendants"). Plaintiffs have filed a Response in Opposition (Doc. 176). The Court recently issued a Memorandum Opinion and Order (Doc. 168) and accompanying Judgment (Doc. 169) in this case. The Court ruled that:

> The six-voter limit at § 7-5-310(b)(4)(B) of the Arkansas Code is **DECLARED** to be preempted by § 208 of the VRA. Sections 7-1-103(a)(19)(C) and 7-1-103(b)(1) of the Arkansas Code are also **DECLARED** to be preempted by § 208 to the extent they are used to enforce criminal penalties for violations of § 7-5-310(b)(4)(B). The Court

> hereby **PERMANENTLY ENJOINS** the State and County Defendants, their employees, agents, and successors in office, and all persons acting in concert with them, from enforcing § 7-5-310(b)(4)(B), 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). The State and County Defendants are **ORDERED** to inform their staff to cease enforcement of § 7-5-310(b)(4)(B) in advance of the 2022 General Election. The State and County Defendants are **FURTHER ORDERED** 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). In all future elections after the 2022 General Election, Defendants are **ORDERED** to update all trainings, manuals, websites, and any materials given to voters or voter assistors to remove any reference to the six-voter limit at § 7-5-310(b)(4)(B)

(Doc. 168, p. 38). The Motion requests that the Court clarify these rulings in two respects.

First, the State Defendants ask the Court to clarify that the State Defendants are not responsible for the actions of the 72 Arkansas counties that were not party to this litigation and have not been explicitly enjoined. The State Defendants explain that they have recently trained the nonparty county officials "on the importance of enforcing the six-voter limit." (Doc. 170, p. 3). The nonparty county election officials and poll workers are not employees of the State Defendants. However, county election officials are required to "exercise [their] duties consistent with the training and materials provided by the State Board." Ark. Code Ann. § 7-4-107(a)(2). Because the State Defendants have previously trained the nonparty county election boards and have declined to inform them of the Court's ruling, the State Defendants assert those counties "will enforce the six-voter requirement at the polls" during the 2022 General Election. (Doc. 170, p. 4).[1]

[1] The State Defendants appear to argue that all Arkansas county election boards were necessary parties to this litigation. This conflicts with their position at the motion-to-dismiss stage, where they argued local prosecuting attorneys were necessary parties but said nothing of county election boards. *See* Doc. 63, pp. 22–24.

The Court's declaration that the six-voter limit is invalid under federal law is a final, enforceable judgment. *See Steffel v. Thompson*, 415 U.S. 452, 470–71 (1974). The State Defendants could have ensured clarity by informing the nonparty county election boards of the Court's declaration. Instead, they describe "turmoil" where none exists. (Doc. 170, p. 1). In any event, the Court is happy to assist the State in ensuring everyone is on the same page about the legality of the six-voter limit. The Court will amend its Memorandum Opinion and Order and Judgment to order the members of the State Board of Election Commissioners to promptly send a memorandum to every county election board in Arkansas stating that this Court has declared the six-voter limit invalid under federal law and enjoined the State from enforcing it. The State Board has previously sent similar memoranda for changes in election law, *see* Docs. 176-1, 176-2, and the State Defendants concede that county election officials are required by law to follow *all* training and materials the State Board provides.

Moreover, to the extent any nonparty acts in concert with the State Defendants to enforce the six-voter limit, the Court has already enjoined such behavior. A party cannot "evade an injunctive order through the actions of a nonparty," *Thompson v. Freeman*, 648 F.2d 1144, 1147 (8th Cir. 1981), and all "persons who are in active concert or participation" with named parties are bound by a district court's injunction, Fed. R. Civ. P. 65(d)(2)(C). But State Defendants' obligations under the Court's injunction remain the same regardless of the actions of third parties, including county election boards. For example, if a nonparty county election board chooses to ignore both the Court's declaration and the State Board's forthcoming memorandum and refers a possible violation of the six-voter limit to the State Board for enforcement, the State Board is

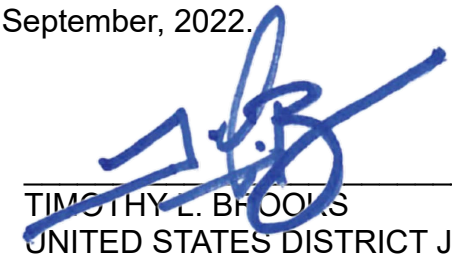
enjoined from taking any enforcement actions against the subject of that referral. In this example, the county election board's actions would not cause the State Defendants to be in contempt of this Court's injunction.

Second, the State Defendants ask that the Court clarify that no Defendant is required to use the Assisted Voter Card to track voter assistors if they do not already do so. While the parties' summary judgment briefing was unclear, the State Defendants now inform the Court that the Assisted Voter Card is only used by Washington County. Plaintiffs assert the card is also used by Benton County. The Court has ordered *any* Defendant that uses the Assisted Voter Card to remove any reference to the six-voter limit from the document. If the State Defendants play no role in the use of these cards, then obviously nothing is required of them. The Court will amend its Memorandum Opinion and Order and Judgment to make this clear.

The Court reiterates that the six-voter limit is not a voter-facing restriction. The six-voter limit is primarily enforced via the tracking requirement at Ark. Code Ann. § 7-5-310(b)(5), which does not violate federal law, and county election workers can continue to track each assistor as normal. If a county election worker chooses to report to the State Board that an individual may have exceeded the six-voter limit, the State Defendants are enjoined from enforcing that limit. This requirement to do *less* is not the burden the State Defendants make it out to be.

For these reasons, the Motion to Clarify (Doc. 170) is **GRANTED** and the Court will amend its prior rulings accordingly.

IT IS SO ORDERED on this 7th day of September, 2022.



TIMOTHY L. BROOKS
UNITED STATES DISTRICT JUDGE