

**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' STATEMENT OF MATERIAL FACTS**

Pursuant to Fed. R. Civ. P. 56 and local rule 56.1(a) of the United States District Court for the Western District of Arkansas, Plaintiffs Arkansas United and L. Mireya Reith file the following statement of material facts (hereinafter "SOF ¶") as to which there does not exist a dispute in support of Plaintiffs' Motion for Summary Judgment.

**A. Limited English Proficient Voters in Arkansas Require Assistance in Casting Their Ballots.**

1. Each year, thousands of immigrants in Arkansas become naturalized U.S. citizens and register to vote.<sup>1</sup>

2. Approximately 83,000 Latinos are eligible to vote in Arkansas.<sup>2</sup>

3. In order to vote, many limited English Proficient (“LEP”) voters require assistance navigating the process of obtaining ballots in the polling place and reading, marking and casting their ballots. Declaration of L. Mireya Reith, ¶¶ 10,14, and 32, ECF 4-1.

4. Although some jurisdictions in the United States are required by federal law to provide election materials and voter assistance in languages other than English, none of these jurisdictions are located in the State of Arkansas.<sup>3</sup>

5. None of the Election Commissions in Arkansas provide voter education in Spanish, with the exception of Washington County. ECF 4-1, ¶31.

6. The lack of voter education information in Spanish makes voting particularly difficult for LEP voters. ECF 4-1, ¶32.

7. As a result, many Arkansas LEP voters must bring someone with them to the polling place to help them vote, including to read, mark and cast their ballots. ECF 4-1, ¶31-32; Ex. 1 (Hassler Dep.) Tr. 18:14-25, 19:1-12.

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<sup>1</sup> “Profiles on Naturalized Citizens: 2019 State, Arkansas” U.S. Department of Homeland Security, available at <https://www.dhs.gov/profiles-naturalized-citizens-2019-state> (last visited 9/20/21).

<sup>2</sup> “Mapping the Latino Electorate,” Pew Research Center, available at <https://www.pewresearch.org/hispanic/interactives/mapping-the-latino-electorate/iframe/> (last visited 9/20/21).

<sup>3</sup> See “Voting Rights Act Amendments of 2006, Determinations Under Section 203,” U.S. Department of Commerce, available at <https://www.justice.gov/crt/file/927231/download> (last visited 9/20/21).

8. Sebastian County does not have designated employees to provide language assistance to voters, nor does it specifically recruit bilingual poll workers to assist LEP voters. Ex. 2 (Sebastian Cnty. Defs. Resp. to Interrog.) No. 8; Ex. 1 (Hassler Dep.) Tr. 31:22-32:8.

9. During the 2020 General Election, Sebastian County used less than five bilingual high school students and possibly two additional bilingual poll workers to provide language assistance to LEP voters. Ex. 1 (Hassler Dep.) Tr. 29:17-23, 31:6-21.

10. Sebastian County did not provide LEP voters any additional resources to help them cast their ballot during any prior election. Ex. 1 (Hassler Dep.) Tr. 33:22-34:4.

11. The Benton County Election Commission (“Benton County”) provides bilingual poll workers to LEP voters only when the poll worker identifies him or herself as able to speak Spanish. Ex. 3 (Anzalone Dep.) Tr. 31:6-22. Benton County did not provide additional resources to LEP voters during prior elections. Ex. 3 (Anzalone Dep.) Tr. 37:6-11.

12. In the 2020 General Election and in prior elections, Washington County provided translated materials to LEP voters, which were translated by Arkansas United. Ex. 4 (Price Dep.) 31:6-32:18; Ex. 4-2 (Email from Jennifer Price to Mireya Reith).

13. Washington County Election Commission Executive Director Jennifer Price has depended on trusted community organizations, including Arkansas United, to provide translated materials and other resources to LEP voters. Ex. 4 (Price Dep.) Tr. 41:25-42:21.

14. Washington County also had bilingual high school student poll workers and ten other bilingual poll workers that could provide some language assistance, but only in Springdale, Arkansas. Ex. 4 (Price Dep.) Tr. 18:23-25, 33:9-16; 34:5-35:8.

15. Washington County typically placed at least one bilingual poll worker at each of seven polling sites located in Springdale, including the Springdale Civic Center. Ex. 4 (Price Dep.) Tr.

20:4-13; 24:7-14; Ex. 4-3 (Email from Jennifer Price to S. Portillo, cc'ing A. Gonzalez, C. Reyes, and M. Reith).

16. Ms. Price shares the concern of Plaintiff Mireya Reith that LEP voters have difficulty casting their ballots because of language barriers. Ex. 4 (Price Dep.) Tr.16:5-16:20; 41:17-41:24. Since 2014, Washington County supervisors have raised similar concerns. Ex. 4 (Price Dep.) Tr. 16:21-17:3.

17. Organizations and individuals have also communicated to Washington County that voters: have not received needed language assistance in voting; have not received language assistance in voting from the person of their choice; and/or are at risk of not receiving language assistance in voting in an election. Ex. 5 (Washington Cnty. Defs. Resp. to Pls. Interrog. No. 2).

**B. Arkansas United's Provision of Assistance to Limited English Proficient Voters**

18. Plaintiff Arkansas United is a non-profit membership organization located in Springdale, Arkansas and founded in 2010. ECF 4-1, ¶2.

19. Plaintiff L. Mireya Reith is the founder and executive director of Arkansas United. ECF 4-1, ¶1.

20. Arkansas United advocates for immigrant populations in Arkansas and works to ensure that immigrants in Arkansas have the information and capacity to become full participants in the state's economic, political and social processes. ECF 4-1, ¶2. Arkansas United engages about 100,000 Arkansans, and directly assists about 20,000 Arkansans every year through various services. ECF 4-1, ¶5.

21. Arkansas United is a dues paying membership organization. ECF 4-1, ¶3. Members have access to all services provided by the organization, including: individual, administrative and legislative advocacy; family-based legal services; regional immigrant resource centers in

Springdale and Little Rock; Community Navigators in ten communities in Arkansas working in partnership with local service providers to connect qualified immigrants to private and public assistance programs; and specialized navigation for Hispanic businesses (through *Conexiones a Negocios Latinos/Latino Business Connections*) and Hispanic parents (through *Alas/Wings*). ECF 4-1, ¶¶3-4.

22. As a non-profit organization, Arkansas United relies primarily on grants and donations to fund its work. ECF 4-1, ¶11. Arkansas United is usually able to secure only one to three grants from foundations for its Get Out The Vote program. ECF 4-1, ¶11. Arkansas United also solicits donations of “core,” also known as unrestricted, funding to support its civic engagement efforts from various funders but this type of funding is very difficult to secure. ECF 4-1, ¶11.

23. Members of Arkansas United include LEP voters who rely on assistors of their choice, including staff and volunteers of Arkansas United, to help them read, mark and cast their ballots. ECF 4-1, ¶14. These members who are LEP voters include new citizens and others who fear making a mistake when filling out their ballots. ECF 4-1, ¶31. Securing help in voting from trusted assistors enables these members of Arkansas United, and other LEP voters, to cast an informed and meaningful vote. ECF 4-1, ¶34.

24. Since its incorporation in 2010, Arkansas United, among other things, has operated non-partisan voter registration and Get Out the Vote campaigns in Arkansas. ECF 4-1, ¶6. Its activities include phone banking, door-to-door canvassing and texting within the immigrant and Latino communities. ECF 4-1, ¶6. Arkansas United educates immigrants about the voting process through outreach events, material dissemination, social media and collaborations with ethnic media. ECF 4-1, ¶6.

25. As an organizing and membership organization, Arkansas United uses its staff and also recruits volunteers and coordinates partners to support Get Out the Vote activities targeting Hispanic and Asian American voters in Arkansas. ECF 4-1, ¶9.

26. Arkansas United, through the coordinated work of staff and volunteers, also assists LEP voters and voter members in voting at the polls, provides car rides to the polls, operates a local Spanish-language hotline for voters, and facilitates bilingual voter protection volunteers in coordination with other nonprofits. ECF 4-1, ¶8.

27. In 2014, the first year Arkansas United provided language assistance at the polls, Arkansas United helped over 75 LEP voters. ECF 4-1, ¶10. Many of the voters Arkansas United assists are elderly and require both interpretation and literacy assistance. ECF 4-1, ¶10.

28. LEP voters rely on Arkansas United as a trusted organization and choose them as the assistor of their choice to help them mark and cast their ballot. ECF 4-1, ¶ 34.

29. For example, during early voting in the 2020 General Election, Ms. Susana Terrazas, a registered voter, asked Arkansas United staff member Celina Reyes to assist her in casting her ballot. Ex. 6 (Terrazas Dep.) Tr. 6:19-22, 12:12-15; Ex. 7 (Celina Reyes Assisted Voter card).

30. Although Ms. Terrazas can read and understand some English, she is not fluent in the English language and has difficulty understanding some terms in English. Ex. 6 (Terrazas Dep.) Tr. 10:5-20.

31. During the 2020 General Election cycle, Ms. Terrazas received a call from Arkansas United to ask Ms. Terrazas if and when she was going to vote, and Ms. Terrazas replied that she would vote later in the week. Ex. 6 (Terrazas Dep.) Tr. 6:23-7:13. After the call, Ms. Terrazas had a discussion with her husband about going to vote; they discussed the fact that they required help to cast their ballots and called Arkansas United for help. *Id.*

32. Ms. Terrazas spoke with Celina Reyes and asked Ms. Reyes to assist her in voting. Ex.6 (Terrazas Dep.) Tr. 6:23-7:13; 12:12-15.

33. In prior elections, Ms. Terrazas' son helped her cast her ballot, but he was unavailable to help her vote in the 2020 General Election. Ex. 6 (Terrazas Dep.) Tr. 12:16-24.

34. Ms. Terrazas did not go to her polling location and ask for language help in casting her ballot because she did not know if there would be anyone at the polling location to help her, so she called Arkansas United to ensure she could cast her vote. Ex. 6 (Terrazas Dep.) Tr. 14:9-16.

35. Ms. Reyes assisted Ms. Terrazas and Ms. Terrezas' husband, Saul Octavio Acosta, when they voted in the 2020 General Election Ex. 6 (Terrazas Dep.) Tr. 5:8-9; 15:8-10; Ex. 7 (Celina Reyes Assisted voter card). Without Ms. Reyes' help, it would have been difficult for Ms. Terrazas to vote, and it was important for her to vote. Ex. 6 (Terrazas Dep.) Tr. 15:14-24.

36. Ms. Terrazas had no other person to help her cast her vote in the 2020 General Election so she called Arkansas United. Ex. 6 (Terrazas Dep.) Tr. 12:12-13:2.

### **C. Defendants Enforce the Voter-Assistance Restrictions**

37. State Defendants (individually "Sharon Brooks, Bilenda Harris-Ritter, William Luther, Charles Roberts, James Sharp, J. Harmon Smith, and John Thurston") are members of the Arkansas State Board of Election Commissioners ("The Board"). State Defendants Answer 3, at ¶ 14, ECF 104.

38. The Board has broad statutory authority to administer and ensure compliance with Arkansas election law, including the challenged voter-assistance restrictions. Ex. 8 (Shults Dep.) Tr. 25:5-23, 49:7-50:4; 53:16-25.

39. The Board conducts and coordinates statewide training on the challenged voter-assistance restrictions for county election commissioners and election officials. Ex. 8 (Shults Dep.) Tr.

14:25-15:12, 21:10-22:3, 30:12-19; Ex. Price Dep. 44:23-45:18; Ex. 3 (Anzalone Dep.) Tr. 38:7-39:10.

40. The Board monitors compliance by local election authorities with the voter-assistance restrictions. Ex. 8 (Shults Dep.) Tr. 27:8-29:2 & 30:12-19; Ex. 4 (Price Dep.) Tr. 44:23-45:18; Ex. 1 (Hassler Dep.) Tr. 36:3-37:10; Ex. 3 (Anzalone Dep.) Tr. 38:7-39:10.

41. The Board also issues a manual of procedures for county election commissions as well as additional training materials for election officials and poll workers, which include instructions for compliance with the challenged voter-assistance restrictions. Ex. 2 (Separate Benton Cnty. Defs. Resp. to Pls. Interrog. No. 6); Ex. 2 (Separate Sebastian Cnty. Defs. Resp. to Pls. Interrog. No. 6); Ex. 5 (Washington Cnty. Defs. Resp. to Pls. Interrog. No. 7 and 10).

42. The Board investigates any alleged violations of the voter-assistance restrictions. Ex. 8 (Shults Dep.) Tr. 49:7-50:74.

43. From 2018-2019, the Board investigated and found probable cause that two individuals, including Mr. Carlon Henderson, had assisted more than six voters in violation of the challenged voter-assistance restrictions during the 2018 General Election. Ex. 8 \*Shults Dep.) Tr. 61:14-65:7.

44. The Board offered to settle the complaint against Mr. Henderson by issuing him a Letter of Caution. Ex. 8 (Shults Dep.) Tr. 61:14-62:8; Ex. 10 (Henderson Accepted Settlement Offer Ltr). After Mr. Henderson accepted the offer, the Board issued Mr. Henderson a Letter of Caution, which advised Mr. Henderson that he violated the voter-assistance restrictions. Ex. 8-15 (Ltr of Caution Carlon Henderson). If Mr. Henderson had refused the Board's offer, he would have had to attend a scheduled hearing and face possible fines. *Id.*



45. The Washington County Defendants (individually “Renee Oelschlaeger, Bill Ackerman, Max Deitchler, and Jennifer Price”), the Benton County Defendants (individually “Russell Anzalone, Robbyn Tumey, and Harlan Stee”), and the Sebastian County Defendants (individually “David Damron, Luis Andrade, Lee Webb, and Meghan Hassler”), are responsible for, among other duties, ensuring “compliance with all legal requirements relating to the conduct of elections” as required by Arkansas Election Code, including ensuring compliance with the challenged voter-assistance restrictions. *See* Arkansas Election Code § 7-4-107(a)(1).

46. Washington County Defendants, Sebastian County Defendants, and Benton County Defendants, (hereinafter collectively the “County Defendants), all perform their duties consistent with the training and materials the Board provides them, including with respect to the challenged voter-assistance restrictions. Ex. 9 (Separate Benton Cnty. Defs. Resp. to Pls. Interrog. No. 6); Ex. 2 (Separate Sebastian Cnty. Defs. Resp. to Pls. Interrog. No. 6); Ex. 5 (Washington Cnty. Defs. Resp. to Pls. Interrog. No. 7).

47. County Defendants instruct poll workers regarding the voter-assistance restrictions. Ex. 11 (SBEC Poll Worker Guide) SOS & SBEC 473; Ex. 4 (Price Dep.) Tr. 66:19-67:10, Ex. 1 (Hassler Dep.) Tr. 56:6-58:7; Ex. 3 (Anzalone Dep.) Tr. 48:15-49:5. County Defendants instruct poll workers to: (1) keep a list of all voters assisted; (2) record the name of each voter that is assisted; and (3) record the name and address of the person chosen by the voter to assist. Ex. 4 (Price Dep.) Tr. 66:19-67:10, Ex. 1 (Hassler Dep.) Tr. 56:6-58:7; Ex. 3 (Anzalone Dep.) Tr. 48:15-49:5. County Defendants train and instruct poll workers to follow these procedures. Ex. 11 (2020 SBEC Poll Worker Guide) SOS & SBEC; Ex. 8 (Shults Dep.) Tr. 21:10-22:3, 30:12-18, 41:19-43:21; Ex. 8-4 (SBEC 2020 Poll Worker Training Presentation) 49-51; Ex. 4 (Price Dep.) Tr. 60:2-61:4, Ex. 1 (Hassler Dep.) Tr. 23:3-24:6; Ex. 3 (Anzalone Dep.) Tr. 38:7-39:10.

48. County Defendants, through their poll workers, make and maintain these lists of all persons assisting voters in accordance with Arkansas Election Code Section 7-5-310(b)(5). Ex.8 (Shults Dep.) Tr. 21:15-22:10; Ex. 4 (Price Dep.) Tr. 66:19-67:10; Ex. 1 (Hassler Dep.) Tr. 44:6-45:2; Ex. 3 (Anzalone Dep.) Tr. 41:14-42:11.

49. If County Defendants believe that a person may have assisted more than six voters, County Defendants submit that information and any evidence to the Board or the Prosecuting Attorney. Ex.8 (Shults Dep.) Tr. 106:17-20; Ex. 4 (Price Dep.) Tr. 57:24-58:5; Ex 1 (Hassler Dep.) Tr. 54:23-55:2; Ex. 3 (Anzalone Dep.) Tr. 46:1-16.

**D. The Arkansas Voter-Assistance Restrictions Harm LEP Voters, including Arkansas United Members, and Harm Arkansas United**

**1. The Arkansas Voter-Assistance Restrictions Deny Assistance to LEP Voters**

50. There were more Latino LEP voters that needed assistance in casting their ballot at the polls during the 2020 General Election than in prior elections. Ex. 15 (L. Mireya Decl.) ¶ 14. In anticipation of higher demand of LEP voters that would need Arkansas United's help, Arkansas United tried to recruit additional volunteers to provide language assistance to LEP voters at the polls. *Id.* at 5. However, due to COVID-19, Arkansas United had a difficult time recruiting additional volunteers. ECF 4-1, ¶ 34.

51. As a result, and as a direct result of the 6-person limit imposed by the Arkansas voter-assistance restrictions, Arkansas United lacked the capacity to assist, and did not assist all the LEP voters who requested Arkansas United's assistance in the 2020 General Election. *Id.* at ¶¶ 5-6.

52. Because of the 6-person limit imposed by the Arkansas voter-assistance restrictions, Arkansas United could not assist more than six voters per employee, despite the greater demand for assistance from voters who had chosen Arkansas United staff to help them. ECF 4-1, ¶ 17.

53. Arkansas United staff provided some support to the voters and voter members whom it could not assist in voting. Ex. 15 (L. Mireya Decl.) ¶ 6. Arkansas United staff recommended to voters who asked for assistance that the voters find alternative people to provide language assistance in voting. *Id.* When a LEP voter called the Arkansas United office seeking assistance in casting his or her ballot, Arkansas United helped that LEP voter try to track down a family, friend, or acquaintance to assist them in casting their ballot. *Id.* As a result, voters and Arkansas United voter members who had chosen assistors who worked for Arkansas United did not receive the assistance that they had chosen and requested. *Id.*; Ex.15 (A. Gonzalez Decl.) ¶ 19.

54. On Election Day, due to COVID-19, Arkansas United only had a total of six staff and volunteers working at the Springdale Arkansas United office. Ex.15 (L. Reith Decl.) ¶7. With the voter-assistance provisions, the six Arkansas United Staff could only assist a maximum of 36 LEP voters in casting their ballot, but that number was actually less because several Arkansas United staff and volunteers had already provided assistance to LEP voters during early voting. *See Id.* Arkansas United helped over a hundred LEP Voters find assistance from an alternative assistor because Arkansas United did not have the capacity to help all of them. Ex. 15 (L. Reith Decl.) ¶ 5.

## **2. Arkansas United and the Voter Assistance Restrictions**

55. Arkansas United has never received funding to support its assistance to LEP voters and voter members in casting their ballots at the polls. ECF 4-1, ¶11. In order to assist LEP voters, and at the same time comply with the 6-person limit in the Arkansas voter-assistance restrictions,

Arkansas United diverted staff away from its phone banking efforts and other critical activities. Ex.12 (L. Reith Decl.) ¶9.

56. Arkansas United implemented strategies and measures to manage the voter-assistance restrictions but those measures drained resources from Arkansas United. Ex.12 (L. Reith Decl.) ¶11; Ex. 13 (A. Gonzalez Decl.) ¶ 12. When Arkansas United staff or volunteers helped four or five voters, they would call other staff or volunteers who were phone banking and ask them to come to the polling sites to help. Ex. 15 (S. Fonseca Decl.) ¶ 17; Ex. 12 (L. Reith Decl.) ¶ 11; Ex. 13 (A. Gonzalez Decl.) ¶ 26.

57. Arkansas United was forced to divert staff away from the office to provide language assistance to voters. Ex. 15 (S. Fonseca Decl.) ¶ 10; Ex. 12 (L. Reith Decl.) ¶ 11; Ex. 13 (A. Gonzalez Decl.) ¶ 21-23.

58. Ms. Sohary Fonseca, an Arkansas United employee, created a form to help keep track of all the voters Arkansas United staff assisted; it contained the voters name and the type of assistance provided. *Id.* Maintaining these lists diverted Ms. Fonseca away from other critical tasks, including Get Out the Vote efforts. *Id.*

59. Arkansas United also had to recruit outside volunteers in the 2020 General Election. ECF 4-1, ¶11. In order to avoid Arkansas United staff and volunteers violating the voter-assistance restrictions, Arkansas United spent resources recruiting volunteer assistors, a task made more difficult by the COVID-19 pandemic and the voter-assistance restrictions. ECF 4-1, ¶16; Ex. 12 (L. Reith Decl.) ¶¶ 5-6.

60. Arkansas United spent resources assisting LEP voters and voter members in obtaining help from a family member or another trusted assistor. Ex. 12 (L. Reith Decl.) ¶ 5. These 2020

General Election recruiting efforts further diverted Arkansas United's staff time and resources away from its phone banking efforts. ECF 4-1, ¶29.

61. As part of its phone banking program, Arkansas United called LEP voters to encourage them to vote. Ex. 15 (S. Fonseca Decl.) ¶ 10; Ex. 12 (L. Reith Decl.) ¶ 7. If the voters had not yet voted, Arkansas United offered assistance, including transportation and interpretation assistance. Ex. 15 (S. Fonseca Decl.) ¶ 10. Among the voters, Arkansas United staff and volunteers reached through phone banking, several expressed difficulties with voting due to a language barrier. Ex. 15 (S. Fonseca Decl.) ¶ 10.

62. During the 2020 General Election, Arkansas United had to divert staff away from its phone banking efforts Ex. 12 (L. Reith Decl.) ¶ 7; Ex.16 (S. Fonseca Dep.) 12:18-13:2 & 34:25-35:10. As a result, Arkansas United's staff was unable to complete the phone banking deliverables that its funder required under the terms of its grant. Ex. 12 (L. Reith Decl.) ¶ 7.

63. Arkansas United received a grant for Four Freedoms Fund to do outreach and election education to voters throughout Arkansas. *Id.* Arkansas United was supposed to complete 115,563 dials/attempts to voters, but in the end Arkansas United only completed 76,116 dial/attempts because it had to divert staff away from its phone banking efforts. *Id.* at ¶ ¶ 7, 11.

### **3. November 2020 Election Day at the Springdale Civic Center.**

64. Arkansas United assisted LEP voters in reading, marking, and casting their ballots in the 2020 General Election and in prior elections, including at the Springdale Civic Center. *Id.* at ¶ 8; Ex. 15 (S. Fonseca Decl.) ¶ 14. Ex. 13 (A.Gonzalez Dep.) 9:15-19; Ex. 6 (Terrazas Dep.) Tr. 12:12-15; Ex. 17 (Araceli Gonzalez assisted voter cards); Ex. 18 (Margarita Gonzalez assisted voter cards); Ex. 19 (Melissa Hernandez assisted voter cards); Ex. 20 (Sohary Fonseca voter lists); Ex. 21 (Jaime Cascantes assisted voter cards); Ex. 7 (Celina Reyes assisted voter cards).

65. On Election Day in November 2020, a county poll worker from the Springdale Civic Center went to the Arkansas United office, which was also located in Springdale, Arkansas, and asked Arkansas United to help to provide LEP voters assistance in casting their vote by providing language assistance. Ex. 13 (A. Gonzalez Dep.) Tr. 13:20-14:4; 39:1-12.

66. Ms. Sohary Fonseca, an Arkansas United employee, left the office and arrived at the Springdale Civic Center around 2:30 p.m. where the poll worker informed her of the demand for language assistance to voters because they did not have enough bilingual workers. Ex. 15 (S. Fonseca Decl.) at ¶¶ 14-15. There was a line of LEP voters waiting to receive language assistance to vote. *Id.*

67. After a poll worker supervisor explained the voter assistance procedures, he directed Ms. Fonseca to help an LEP voter. *Id.* Ms. Fonseca assisted three LEP voters in casting their ballots by reading and translating the ballots to them sentence by sentence. *Id.* at ¶ 15. Around 4:30pm, after assisting a fourth voter, Ms. Fonseca returned to the Arkansas United Springdale office to continue making phone banking calls. *Id.*

68. At 4:40 p.m. Ms. Araceli Gonzalez, an Arkansas United employee, stopped making telephone calls as part of the phone banking deliverable that Arkansas United had to meet, and went to the Springdale Civic Center to provide language assistance for LEP voters. Ex. 13 (A. Gonzalez Dep.) Tr. 38:10-23; Ex. 14 (A. Gonzalez Decl.) ¶ 25.

69. Prior to Election Day, and as part of her duties as an employee of Arkansas United, Araceli Gonzalez had already helped two LEP voters during early voting. Ex. 13 (Gonzalez Dep.) Tr. 20:15-24; 34:12-36:8; 37:9-15; Ex. 17 (Araceli Gonzalez Assisted Voter cards).

70. On Election Day, Araceli Gonzalez assisted four additional LEP voters in casting their ballots at the Springdale Civic Center and reached her six-voter limit. Ex. 13 (A. Gonzalez Dep.

Tr.) 39:13-24; Ex. 17 (A. Gonzalez assisted voter cards). After she helped a sixth LEP voter, she stopped assisting any additional LEP voters at the Springdale Civic Center in order to comply with the voter-assistance restrictions and avoid any criminal prosecution. Ex. 13 (A. Gonzalez Dep.) Tr. 25:19-26:1.

71. Araceli Gonzalez knew she could only help four additional LEP voters so she called her sister Margarita Gonzalez, an Arkansas United volunteer, to help provide language assistance at the Springdale Civic Center. Ex. 13 (A. Gonzalez Dep.) 13:20-14:4. Araceli Gonzalez also asked her sister to bring anyone else who could help provide assistance at the Springdale Civic Center. Ex. 13 (A. Gonzalez Dep.) Tr. 41:19-42:1.

72. Margarita Gonzalez, and her friend, Melissa Hernandez, arrived at the Springdale Civic Center to help. Ex. 14 (A. Gonzalez Decl.) ¶ 28; Ex. 19 (Melissa Hernandez assisted voter cards). Both assisted additional LEP voters. Ex. 13 (A. Gonzalez Dep.) Tr. 14:12-15:11; 42:21-43:2. Margarita Gonzalez was able to help five additional voters in casting their ballot by providing language assistance, and Melissa Hernandez was able to help four additional voters. Ex. 18 (Margarita Gonzalez assisted voter cards); Ex.19 (Melissa Hernandez assisted voter cards).

73. Araceli Gonzalez left the Springdale Civic Center when her sister and Melissa Hernandez arrived. Ex. 14 (A. Gonzalez Decl.) ¶ 28. Before Araceli Gonzalez left the Springdale Civic Center, she noticed that there were still voters who required language assistance to cast their ballot. Ex. 13 (A. Gonzalez Dep.) Tr. 42:15-20.

74. Araceli Gonzalez returned to the Arkansas United office and continued her phone banking work. Ex. 13 Gonzalez Dep.26:22-27:3.

75. Later that evening, Ms. Fonseca returned to the Springdale Civic Center because Margarita Gonzalez and Melissa Hernandez were approaching their assistance limit and needed backup. Ex. 15 (S. Fonseca Decl.) ¶ 17.

76. Ms. Sohary Fonseca had to stop performing her phone banking duties at Arkansas United's office to go back and assist LEP voters at the Springdale Civic Center. Ex. 16 (S. Fonseca Dep.) Tr. 12:18-13:2 & 34:25-35:10.

77. Ms. Fonseca was able to help a fifth voter when she arrived at the Springdale Civic Center. Ex. 15 (S. Fonseca Decl.) ¶ 17.

78. Arkansas United did not complete the calls needed on its phone banking list on Election Day. Ex. 16 (S. Fonseca Dep.) Tr. 19:9-12.

#### **4. The Harm of Threatened Criminal Prosecution**

79. Defendants tracked each voter that Arkansas United staff and volunteers assisted in casting their ballot during the 2020 General Election. ECF 4-1, ¶18; Ex. 1 (Hassler Dep.) Tr. 44:6-46:14; Ex. 4 (Price Dep.) Tr. 69:24-70:6; Ex. 17 (A. Gonzalez assisted voter cards); Ex. 3 (Anzalone Dep.) Tr. 41:15-44:20; Ex. 23 (McKim Dep.) Tr. 38:21-39:15.

80. Every single time a member of the Arkansas United staff or a volunteer provided language assistance to a voter, a poll worker instructed the assistor to fill out a voter assistance card with, among other information, the assistor's name and address, and the name of the voter he or she assisted. ECF 4-1, ¶18; Ex. 13 (A. Gonzalez Dep.) Tr. 36:9-17; Ex.16 (S. Fonseca Dep.) Tr. 38:21-39:6.

81. Arkansas United staff and volunteers turned in to the poll workers completed voter assistance cards for all the voters they helped. *See* Ex. 13 (A. Gonzalez Dep.) Tr. 36:9-25. The voter assistor cards stated in bold and red ink, "All other persons may assist no more than six



voters in marking and casting a ballot at an election." *See* Ex. 13 (A. Gonzalez Dep.) Tr. 40:14-41:13; Ex. 17 (A. Gonzalez assisted voter cards).

82. The voter assistance restrictions are enforced against individuals that assist voters in casting and marking their ballot by providing language assistance. Ex. 23 (H. McKim Dep.) Tr. 25:10-25:13

83. Several Arkansas United staff and volunteers felt fear and frustration about the challenged voter-assistance restrictions and potential risk of criminal prosecution. ECF 4-1, ¶18; Ex. 15 (S. Fonseca Decl.) ¶ 12.

Dated: September 22, 2021

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that, on September 22, 2021, a copy of the above Plaintiff's Motion for Summary Judgement was filed electronically in compliance with Local Rules.

*/s/ Susana Sandoval Vargas*  
Susana Sandoval Vargas

ATTORNEY FOR PLAINTIFFS