

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
SIXTH DIVISION

ARKANSAS VOTER INTEGRITY  
INITIATIVE, INC., CONRAD REYNOLDS,  
and DONNIE SCROGGINS

PLAINTIFFS

vs.

Case No. 60cv-22-8658

JOHN THURSTON, in his official capacity  
as ARKANSAS SECRETARY OF STATE,  
the ARKANSAS STATE BOARD OF  
ELECTION COMMISSIONERS, in its  
official capacity, and ELECTION SYSTEMS  
AND SOFTWARE, LLC

DEFENDANTS

**STATE DEFENDANTS' RESPONSE IN  
OPPOSITION TO PLAINTIFFS' MOTION FOR INJUNCTION**

Come Separate Defendants John Thurston, in his official capacity as Arkansas Secretary of State, and the "Arkansas State Board of Election Commissioners, in its official capacity," (collectively, the "State Defendants") and for their Response in Opposition to Plaintiffs' Motion for Injunction, state:

1. On May 4, 2023, Plaintiffs filed an Amended Complaint including their original request for declaratory judgment interpreting Ark. Code. Ann. § 7-5-504 and four additional claims: (1) Declaratory Judgment Pertaining to the Help America Vote Act of 2002 ("HAVA"); (2) Illegal Exaction; (3) Violation of the Arkansas Deceptive Trade Practices Act ("ADTPA"); and (4) Fraud. The claims of violation of the ADTPA and fraud are only directed to ESS.

2. On May 11, 2023, Plaintiffs filed a motion for injunction and supporting brief, requesting the Court find the Election Systems and Software, LLC voting machines do not comply

with the HAVA and Arkansas law and seeking to enjoin the use of these machines in future elections in Arkansas and enjoin the state from spending any money on the purchase or maintenance of these voting machines. The only alleged basis for the Motion for Injunction is that the machines do not comply with HAVA and, in turn, Arkansas law, which allegedly constitutes an illegal exaction.

3. These defendants removed this case to federal court on May 24, 2023.

4. The State Defendants filed their Response in Opposition to Plaintiffs' Motion for Injunction on June 8, 2023.

5. The federal court entered an order remanding this case to Arkansas circuit court on July 25, 2023.

6. A hearing is currently set in this matter on August 7, 2023.

7. Plaintiffs' Motion for Injunction is without merit and, in fact, lacks legal argument. Instead, it is comprised of nothing more than repeated conclusory statements unsupported by fact or law; *ipse dixit* at its finest. This is shown by their failure to acknowledge the fact that the voting machines used in Arkansas are tested and certified by the U.S. Election Assistance Commission (EAC), which Congress created in HAVA and vested with the responsibility of setting voting-system standards and of providing for the testing and certification of voting systems. See 52 U.S.C. §§ 20901–21145. In other words, EAC has the ultimate say on the standards that voting machines must satisfy to comply with HAVA.

8. Because the EAC certified Arkansas's machines as complying with HAVA, there is little likelihood that Plaintiffs will succeed on the merits of their claims. Too, they have failed to show a threat of irreparable harm, and instead, enjoining the use of the machines would be of much greater harm to the defendants and have dire implications on the election process across the

country. The public has a strong interest in continuing to use voting machines that comply with all aspects of the law.

9. In response to the Motion for Injunction filed prior to the removal of the case, State Defendants hereby incorporate by reference their Response in Opposition to Plaintiffs' Motion for Injunction and supporting exhibits filed in the federal proceeding as if set forth herein word for word. *See* Ark. R. Civ. P. 10(c).

10. A copy of the Response and supporting exhibits are being filed contemporaneously herewith as follows:

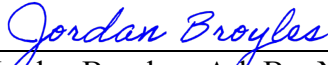
Exhibit A: Response in Opposition to Motion for Injunction,  
Exhibit B: Declaration of Mark A. Robbins (referenced in motion as Ex. 1);  
Exhibit C: Certification of ES&S Voting Equipment (referenced in motion as Ex. 2); and  
Exhibit D: EAC Certificate of Conformance to ESS (referenced in motion as Ex. 3).

11. For the reasons set forth in the incorporated Response in Opposition, State Defendants respectfully request the Court deny Plaintiffs' Motion for Injunction and for all other just and proper relief to which they are entitled.

Respectfully submitted,

TIM GRIFFIN  
Attorney General

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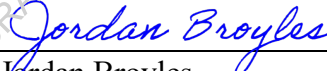
*Attorneys for Separate Defendants John Thurston,  
in his official capacity as Arkansas Secretary of  
State, and the "Arkansas State Board of Election  
Commissioners, in its official capacity"*

**CERTIFICATE OF SERVICE**

I, Jordan Broyles, certify that I have served the foregoing pleading on the following attorneys of record in this matter by filing same with the Court's electronic filing system on this 2nd day of August, 2023:

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