COURT USE ONLY PURSUANT TO ARK. SUP. CT. ADMIN. ORDER NO. 2(B)
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IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

ARKANSAS VOTER INTEGRITY INITIATIVE, INC., et. al.	PLAINTIFF	
vs.		Case No.:
JOHN THURSTON, et. al	DEFENDANT	60CV-22-8658

REPLY TO STATE DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR INJUNCTION

COMES NOW the plaintiffs, by and through their attorney, and for their reply state:

1.   That the State defendants filed a "response in opposition to plaintiffs' motion for injunction" in this court on August 2, 2023. This is the plaintiffs' reply.

2.   That, at the outset, the plaintiff calls the court's attention to the brief of the State defendants. The defendant's brief contains no Arkansas law in support of the State's position. This court should consider the State's brief in opposition as lacking any citation to authority for its arguments.

3.   The State's response is misleading. The State argues that the machines are certified by the EAC and therefore comply with HAVA and Arkansas law. However, the documents offered in support of their position only shows that the machines were certified at the time of the 2020 election.

4.   This case is not about whether the EAC certified the voting machines. This case is about whether the voting machines comply with HAVA and Arkansas law. Instead, of succinctly addressing this point, the State spends expansive time in

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its brief laying out the election procedure and methodology while ignoring the substantive facts at issue.

5.   The State expounds upon the process in which a voter uses the ExpressVote to generate bar codes on a ballot summary card that are then read by the DS200 tabulator.

6.   At no point in their responsive pleadings do the State defendants refute that:

A.   the tabulators used to count the votes cast by the voters are reading bar codes printed by the ExpressVote;

B.   voters using the ExpressVote and DS200 are unable to verify their votes in a private and independent manner before casting their ballot because they cannot determine if the bar codes read by the DS200 tabulators accurately reflect their votes;

C.   ESS has published documents which affirm that the tabulators are reading bar code and not the voter's selections printed in English;

D.   the Director of Elections for the Secretary of State has admitted in a hearing before a House legislative committee that the votes are tabulated by bar code and not the voter's English selections which the voter can verify;

E.   the Director of Elections for the Secretary of State has admitted that it is impossible for a voter to verify that the bar codes read by the tabulators accurately reflect their cast votes until well after the election in a post-election audit long after the time to challenge the election has passed; and

F.   the machines at use in this State are not purchased or maintained with tax dollars.

7.   The State, joined by ESS (which joined the State's response in federal court) fails to address the central issue of the plaintiffs' request for injunctive relief

relating to voting machine performance which is this: The DS200 is reading bar codes to tabulate a voter's selections and there is no way for the voter to verify in a private and independent manner that the bar codes accurately reflect the selections made by the voter, printed in English below the bar codes, on the ExpressVote device.

8.   This simple issue is not, as posited by the State, how secure the machines are before the voting begins, the process to secure the integrity of the machines before and during voting, the pollbook verification process, the vote selection process, how the bar codes are generated by the ExpressVote, how the voter can press voting selections which cause the bar codes to be printed, how the voter can see the bar codes printed, or how a voter places their bar code selections into a tabulator. Instead, the central issue is that there is no way for the voter to know, in a private and independent manner, that the ExpressVote has generated accurate bar codes based on the voter's selections such that the voter can verify his or her votes before placing the ballot in a tabulator.

9.   The simple answer, unrefuted by any of the defendants, is that the voter cannot verify his or her votes before placing them in the tabulator, which is exactly what the Director of Elections for the Secretary of State said to a House committee during the past legislative session.

10.   Instead of having a plausible argument to challenge the plaintiffs' simple assertion and argument, the State wants this court to ignore the third branch of government—the independent judiciary.

11.   The State's argument is that the federal legislative branch passed the

voting laws at issue and the federal executive has determined that the voting machines at issue comply with State and federal voting laws, and therefore it is irrefutable to hold otherwise. In other words, according to the State, the machines comply with HAVA and State law because the government says they comply with HAVA and State law.[1] However, it is this court's job to interpret the law and how it is being applied and that is exactly what the plaintiffs are asking this court to do.

12.   The facts that the machines do not comply with our law and tax dollars are being used to support illegally configured machines are the basis of the plaintiffs' request for an injunction.

13.   Our case law, as set forth in the accompanying brief, demonstrates that the plaintiffs are entitled to injunctive relief.

WHEREFORE, having replied the plaintiffs' move the court for an injunction; for attorney's fees and costs; and for all other just and proper relief.

Respectfully Submitted,

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[1] At this point, please ignore the fact that the State told the federal court that the plaintiff's arguments were "*ipse dixit* at is finest."

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<u>CERTIFICATE OF SERVICE</u>

By my signature above, I certify that a copy of the foregoing has been delivered by the below method to the following person or persons:

☐ First Class Mail   ☐ Facsimile   ☐ Email   ☒ AOC/ECF   ☐ Hand Delivery

       All attorneys of Record

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