

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

**LEAGUE OF WOMEN VOTERS OF ARKANSAS,
et al.**

PLAINTIFFS,

v.

No. 5:20CV05174 PKH

**JOHN THURSTON, in his official capacity as
the Secretary of State of Arkansas, and
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,**

DEFENDANTS.

MOTION TO DISMISS THE SECOND AMENDED COMPLAINT

Plaintiffs' Second Amended Complaint suffers numerous fatal deficiencies. As set forth more fully in the accompanying brief, the Court should dismiss it for the following reasons:

1. Plaintiffs' claims are barred by sovereign immunity.
2. Plaintiffs lack standing.
3. The county boards of election commissioners are necessary and indispensable parties, and Plaintiffs have not joined them as Defendants.
4. Plaintiffs cannot state a claim upon which relief can be granted.
5. There is no cognizable procedural-due-process liberty interest in the right to vote or in voting by absentee ballot.
6. Even if Plaintiffs had a cognizable liberty interest, they would be entitled only to the process inherent in the legislative process.
7. The absentee-ballot-verification requirement does not implicate the right to vote and easily survives rational-basis review.

8. The absentee-ballot-verification requirement would survive *Anderson-Burdick* scrutiny, as the potential burden on the right to vote is minimal and it reasonably serves Arkansas's important interests in verifying voters' identities in order to combat and deter voter fraud, in the orderly administration of elections, in reducing administrative burdens faced by boards of elections with limited time and few volunteers, and in protecting public confidence in the integrity and legitimacy of our representative system of government. Further, Arkansas's absentee-ballot-verification regime is narrowly tailored to the compelling interest of preserving election integrity.

9. Although a separate procedural-due-process analysis is not warranted, Arkansas's verification requirement would survive scrutiny under *Mathews v. Eldridge*, 424 U.S. 319 (1976), because the State's interest is strong, Plaintiffs' interest is weak, and the risk of an erroneous rejection is extraordinarily low.

10. Plaintiffs' Section 10101 claim is premised on dubious assumptions regarding the extent of Congress's enforcement authority.

11. Plaintiffs' claim that voter-identification information is immaterial to voter eligibility fails as a matter of law.

CONCLUSION

In light of the numerous fatal deficiencies of Plaintiffs' claims, Defendants respectfully request that the Court grant Defendants' motion to dismiss the Second Amended Complaint.

Respectfully submitted,

LESLIE RUTLEDGE
Attorney General

Michael A. Cantrell (2012287)
Assistant Solicitor General

OFFICE OF THE ARKANSAS ATTORNEY GENERAL
323 Center Street, Suite 200
Little Rock, AR 72201
Ph: (501) 682-2007
Fax: (501) 682-2591
Michael.Cantrell@ArkansasAG.gov

Attorneys for Defendants

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