

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

**JANET C. BAKER, SUSAN INMAN, and
OLLY NEAL**

PLAINTIFFS

V.

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

DEFENDANT

**PLAINTIFF'S RESPONSE IN OPPOSITION
TO MOTION FOR INTERVENTION**

Plaintiffs, by and through undersigned counsel, state the following for their Response in Opposition to Motion for Intervention filed by Doyle Webb, Chairman of the Republican Party of Arkansas and Representative Doug House:

1. The Court should deny with prejudice the Motion for Intervention by Doyle Webb, Chairman of the Republican Party of Arkansas and Representative Douglas House because Mr. Webb and Representative House fail to meet the requirements of intervention pursuant to Rule 24 of the Arkansas Rules of Civil Procedure.

2. Mr. Webb and Representative House fail to meet the requirements of intervention of right because (a) they do not have any recognized interest in the subject matter of the litigation; (b) the disposition of this action will not impair or impede their ability to protect their stated, yet faulty, interests; and (c) they are adequately represented by Defendant, John Thurston, who is the elected Secretary of State of Arkansas, a Republican, and in turn is represented by the office of elected Republican Attorney General Leslie Rutledge. *See Ark. Dem. Gaz. v. Brantley*, 359 Ark. 75 (2004).

3. This action is one for declaratory judgment. Plaintiffs' fundamental rights to vote, status, and other legal relations are affected by a question of construction of Arkansas law, and Plaintiffs seek a declaration of their rights thereunder. In their motion for intervention, Mr. Webb and Representative House dream up opaque interests and baseless allegations that have nothing whatsoever to do with Plaintiffs' request for declaratory judgment of their rights under the law.

4. For example, Webb and Rep. House's motion mentions unspecified "experience[s]" of "problems that arise when election materials are entrusted to the U.S. Postal Service for delivery." The handling of election materials by the U.S. Postal Service is not a recognized interest or issue whatsoever in the subject matter of this action and has nothing to do with the construction of the Arkansas Code or the Arkansas Constitution. The disposition of this action does not impair or impede Webb or House's "interests"—real or fantasized—regarding the U.S. Postal Service's handling of election materials.

5. Rep. House also states he is "concerned about the dilution of his vote by the participation of persons who are not registered voters." This fantasy completely misses the mark; only registered voters can vote absentee, and Plaintiffs' action for declaratory judgment neither challenges nor impacts that matter of law and of fact whatsoever.

6. The entire tenor of Webb and Rep. House's motion rests on faulty policy debates and fearmongering about voting that have nothing to do with the subject matter of this litigation, which is simple: does current Arkansas law (specified statutes and the constitution) allow Plaintiffs, and other similarly situated eligible (registered) voters, to vote by absentee ballot? The disposition of that question, and thus, this action, will not impair Webb or Rep. House's interests.

7. Even if Webb and Rep. House's fictional "interests" were somehow at issue in this action or would be impaired by the disposition of this action – which they are not – Webb

and Rep. House have provided no facts, reasoning, or other information showing that the Secretary of State of Arkansas or his counsel, the Attorney General of the State of Arkansas, cannot adequately represent those interests as they would relate to this action. Both the Secretary of State and the Attorney General are elected office holders whose jobs charge them with representing the interests of the state and of its citizens in actions such as this one.

8. Mr. Webb and Representative House also fail to meet the requirements for permissive intervention because they have no statutory conditional right of intervention and they have no interest, claim, or defense, that is related to this action or that shares a common question of law or fact. *See Ark. Dem. Gaz. v. Brantley*, 359 Ark. 75 (2004).

9. For the reasons already stated in the preceding paragraphs, none of Mr. Webb and Rep. House's invented "interests" like voting of unregistered voters or the U.S. Postal Service's handling of election mail have any common questions of law for fact with this litigation. Again, Plaintiffs' action is a simple request for declaratory judgment on whether Arkansas law allows registered voters like them to vote by absentee ballot. No issue of fact regarding Plaintiffs' action concerns the lack of voter registration or any issues with the U.S. Postal Service or any other "interest" cited by Webb and Rep. House. Moreover, the interests cited by Webb and Rep. House present no common question of law with Plaintiffs' action.

10. Accordingly, as stated in the preceding paragraphs and more fully in Plaintiffs' Brief in Support of this Response incorporated herein, Mr. Webb and Rep. House fail to meet the requirements of intervention of right or of permission in Rule 24 of the Arkansas Rules of Civil Procedure, and therefore, the Court should deny with prejudice the Motion for Intervention by Doyle Webb Chairman of the Republican Party of Arkansas and Representative Douglas House.

Respectfully submitted,

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all counsel of record.

s/s David A. Couch