

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS**

**FIFTH DIVISION – SIXTH CIRCUIT**

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

**PLAINTIFFS**

**v. Case No. 60CV-20-3565**

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

**DEFENDANT**

**INTERVENORS' REPLY TO  
PLAINTIFFS' OPPOSITION TO THEIR  
MOTION TO INTERVENE**

**I**

**THIS ACTION IS NO LONGER ABOUT  
OBTAINING RELIEF FOR ANY NAMED PLAINTIFF  
BECAUSE IT SEEKS TO FUNDAMENTALLY ALTER  
THE ELECTION LAWS OF THE STATE OF ARKANSAS**

If this litigation were only about the rights of the three named plaintiffs, it would have been dismissed immediately after Secretary of State John Thurston announced that fear of the Covid-19 virus was a legitimate reason for obtaining an absentee ballot.

Mr. Thurston's announcement now exposes this litigation for what it really is – an attempt to fundamentally alter the voting laws of the State of Arkansas. It is an attempt to achieve the ultimate goal of universal voting by mail and open the door for controlling elections in this Country through the practice of ballot harvesting. Not only should this be grounds for intervention by any concerned citizen, but clearly by the Republican Party of the State of Arkansas and one of its elected Representatives.

## **II**

### **THIS ACTION AS A STEP TOWARD THE GOAL OF UNIVERSAL MAIL VOTING**

This Action was filed to take advantage of the restrictions that have been imposed because of the Covid-19 virus. The ultimate goal of these actions is universal mail voting.

Plaintiffs are asking this Court to:

- 1) Prevent enforcement of the penalty of perjury requirement on absentee ballot requests in order to allow any eligible voter to vote by absentee ballot. (Complaint ¶ 100.)
- 2) Ordering the Secretary of State to mail absentee ballot applications, minus the penalty of perjury requirement, to all eligible Arkansas voters. (Prayer for Relief.)

Yet on page nine of their Brief in Opposition to Intervention, Plaintiffs state:

***Plaintiffs’ action is a simple request for declaratory judgment on whether existing Arkansas law allows registered voters like them to vote by absentee ballot.*** [Emphasis added.]

If this Action is indeed such a “simple request,” then why are Plaintiffs continuing to litigate this Action? They already know the answer to their own question. ***All of them are eligible to vote by absentee ballot.***

As the discussion below will demonstrate, much more is at stake in this Action than the rights of the individual Plaintiffs. This case is as an initial step toward the Plaintiffs’ ultimate goal of universal voting by mail.

### **III**

#### **PLAINTIFFS’ OPPOSITION TO INTERVENTION IS BASED ON THE FALSE ASSUMPTION THAT VOTER FRAUD DOES NOT EXIST WITH RESPECT TO MAIL-IN OR ABSENTEE BALLOTS**

Plaintiffs brush aside concerns about ballot fraud raised by Representative Douglas House as “opaque interest and baseless allegations that have nothing whatsoever to do with the subject matter of this litigation.” (Opposition Brief at 5.) They also have the naïve view that “only registered voters can vote absentee.” (*Id.*)

Apparently, Plaintiffs have never heard of voter fraud. However, other prominent members of the Democratic Party have. According to a recent article in the *Wall Street Journal*:

‘Absentee ballots remain the largest source of potential voter fraud.’ That quote isn’t from President Trump, who criticized mail-in voting this week after Wisconsin Democrats tried and failed to change an election at the last minute into an exclusively main-in affair. It’s the conclusion of the bipartisan 2005 report of the Commission on Federal Election Reform, chaired by former President Jimmy Carter and former Secretary of State James Baker III. (A copy of this Article is attached as Exhibit “A.”)

In the State of West Virginia a mail carrier recently pled guilty to: “[O]ne count of attempt to defraud the residents of West Virginia of a fair election and one count of injury to the mail.” According to the West Virginia Attorney General:

In West Virginia every vote counts and those that attempt to disrupt our democratic processes will be held accountable for their actions. (A true and correct copy of the article reporting this instance of voting fraud is attached as Exhibit “B.”)

In New Jersey, an NAACP leader called for a Patterson mail-in vote to be canceled because of corruption claims. One example cited was that of an

individual who never received a mail-in ballot yet someone else voted in his name.

Another article about this incident was entitled:

Hundreds of Mail-In Votes Already Set Aside Due to Voter Fraud Claims in  
Patterson. (Copies of these articles are attached as Exhibit “C.”)

Election fraud has also occurred in the State of Arkansas. In 2013 it led to conviction of a former State Representative Hudson Hallum and his father in the Federal District Court in Little Rock. Both defendants admitted their participation “in a conspiracy to bribe voters to influence absentee votes” in Arkansas District 54. According to a report issued by the U.S. Attorney of the Eastern District of Arkansas, Hallum and his father:

[T]asked . . . [others to help] with identifying absentee ballot voters within District 54; obtaining and distributing absentee ballot applications to particular voters; determining when absentee ballots were mailed to absentee voters by the Crittenden County Clerk’s Office; and making contact with recipients of absentee ballots to assist those voters in completing the ballots. Once such absentee ballots were completed the absentee voters typically placed their ballots in unsealed envelopes, which were retrieved by [other defendants] for inspection to ensure that the absentee ballot votes had been cast for Hudson Hallum. After inspection by Hudson Hallum or Kent Hallum, the absentee ballots that contained votes for Hudson Hallum were

sealed and mailed to the Crittenden County Clerk's Office. If a ballot contained a vote for Hudson's opponent, it was destroyed. (See Report from the U.S. Attorney's Office attached as Exhibit "D.")

#### **IV**

### **BOTH THE REPUBLICAN PARTY OF ARKANSAS AND REPRESENTATIVE DOUGLAS HOUSE QUALIFY AS PERMISSIVE INTERVENORS**

Election fraud is closely associated with mail-in and absentee ballots. Both the Republican Party of Arkansas and State Representative Douglas House have a vital interest in preserving the integrity of elections in this State. They also have an interest in litigation such as this Action where the Plaintiffs seek to weaken laws that were adopted for the purposes of combating such fraud.

Plaintiffs claim those interests can be adequately protected by the Secretary of State and the Attorney General. (Opposition Brief at 8 – 9.) They are wrong.

The Secretary of State, despite whether he is a Republican or Democrat, is a non-partisan official. It is an attempt to weaken voting laws in the State of Arkansas. Neither the Secretary of State nor the Attorney General can adequately represent or defend voters, particularly those of the Republican Party who may bear the direct brunt of this assault if their votes are diluted. This is just like the prosecutor in a criminal case who represents the State but not the victims.

## V

### **PROPOSED INTERVENORS MEET THE NECESSARY REQUIREMENTS FOR PERMISSIVE INTERVENTION AND INTERVENTION OF RIGHT IN THIS ACTION**

The cases cited by Plaintiffs in their opposition to intervention do not apply to the broad public policy issues at stake in this Action. *Billabong Products, Inc. v. Orange City Bank*, 278 Ark. 206, 644 S.W.2d 594 (1983) actually undercuts their position. The question was whether the applicant for intervention “will be left with his right to pursue his own independent remedy against parties, regardless of the outcome of the pending case.” (Plaintiffs’ Brief at 6.)

*Billabong* involved a money dispute. The intervenor had independent remedies it could have pursued. No such remedies are applicable or possible here. Plaintiffs assume that the Republican Party of Arkansas and Representative House are only concerned about interests – “real or fantasized”—regarding the U.S. Postal Service that can be pursued independently. (Plaintiffs’ Brief at 7.)

Plaintiffs attempt to minimize the issues at stake in this litigation by claiming:

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. (Opposition, ¶ 4.)

If the handling of election materials by the Postal Service is not a recognized interest, then what would Plaintiffs say to a citizen who is denied the right to vote because the Postal Service lost his or her ballot?

And if the subject matter of this litigation involves the construction of the Arkansas Code and Arkansas Constitution, then it is no longer one about the question of whether the three named Plaintiffs can vote absentee.

The previous discussion in this Reply Brief also undercuts any notion that Plaintiffs have about “fantasized” issues regarding the Postal Service and mail-in voting. Unlike money disputes which can often be remedied after the fact, elections have consequences. If election laws are changed to the detriment of the public, it is virtually impossible to pick up the pieces after the fact.

Plaintiffs cannot have it both ways. On one hand they claim that the interests Intervenor are pursuing are “separate and distinct” from the “main” action. Yet according to Plaintiffs, the “main” action is whether the Plaintiffs can vote absentee. Plaintiffs say their action is a “*simple request* for declaratory judgment on whether existing Arkansas law allows registered voters like them to vote by absentee ballot.” [Emphasis added.]

That worry has long since been addressed by Secretary Thurston.

Why are Plaintiffs continuing to pursue this litigation? If the distinction they draw concerning remedies applies to Intervenor, it also applies to them. If as they claim, this matter is only about individual remedies, it should have already been dismissed. The fact that Plaintiffs have not done so means it involves much more than individual remedies. It is being pursued in an effort to weaken the requirements for absentee voting in the State of Arkansas and to open the door for all-mail voting. That definitely impacts the rights and interests of the Republican Party of Arkansas and Representative Douglas House. Plaintiffs' Prayer is to disenfranchise all voters who prefer to vote in person.

## **VI**

### **CONCLUSION**

Rule 24(a) of the Arkansas Rules of Civil Procedure permits intervention as a matter of right when:

- (1) A timely application has been filed;
- (2) The party claiming an interest which is subject of the action  
Cannot as a practical matter protect that interest because of inadequate representation of the existing parties to the litigation.

Permissive intervention under Rule 24(b) is allowed when:

- (1) An applicant's claim or defense and the main action have a question of law or fact in common.

The Republican Party of the State of Arkansas and State Representative Douglas House have satisfied the requirements for both intervention as a matter of right and permissive intervention. For all of the above reasons they should be permitted to intervene in this action.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I, George P. Ritter, do hereby certify that on July 15, 2020, I electronically filed the foregoing INTERVENORS' REPLY TO PLAINTIFFS' OPPOSITION TO THEIR MOTION TO INTERVENE with the Clerk of the Court using the CM/ECF System which will automatically send notice to the parties in this Action.

By     /s/ George P. Ritter  
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