

## Voters Who Need Personal Assistance to Vote

*Arkansas United v. Thurston*  
(*Timothy L. Brooks, W.D. Ark. 5:20-cv-5193*)

An action filed on the night before election day sought an injunction against limitations on who could assist voters who needed personal assistance to cast their ballots. Because of the late filing, the district judge denied the plaintiffs immediate relief. But ruling on summary-judgment motions later, he granted the plaintiffs some relief. Appeals are pending.

*Subject:* Voting procedures. *Topics:* Voting technology; laches.

A federal complaint filed in the Western District of Arkansas—at 10:43 p.m. on the night before the November 3, 2020, general election—against state and county election officials by an organization that promotes the interests of immigrants and its founder sought “[a]n injunction requiring Defendants to develop and implement a remedial plan to ensure that voters are permitted to use assistance from persons of their choice when they cast their ballots.”<sup>1</sup> Thirty-eight minutes later, the plaintiffs filed a motion for a temporary restraining order or a preliminary injunction.<sup>2</sup>

Judge Timothy L. Brooks decided that the injunction motion was adequately briefed and that he could deny it on November 3—election day—without a hearing.<sup>3</sup> He found a likelihood of success on the merits:<sup>4</sup> section 208 of the Voting Rights Act provides, “Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.”<sup>5</sup> But “the equities do not favor intervention where the election is already in progress and the requested relief would change the rules of the game mid-play.”<sup>6</sup>

On February 5, 2021, he declined to dismiss an amended complaint.<sup>7</sup> Resolving summary-judgment motions, he determined on August 19, 2022, that one provision of Arkansas’s code violated the Voting Rights Act and an-

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1. Complaint at 16, *Ark. United v. Thurston*, No. 5:20-cv-5193 (W.D. Ark. Nov. 2, 2020), D.E. 1; Opinion at 3, *id.* (Nov. 3, 2020), D.E. 35 [hereinafter Nov. 3, 2020, *Ark. United Opinion*], 2020 WL 6472651; *Ark. United v. Thurston*, 517 F. Supp. 3d 777, 782 (W.D. Ark. 2021).

2. Motion, *Ark. United*, No. 5:20-cv-5193 (W.D. Ark. Nov. 2, 2020), D.E. 3; Nov. 3, 2020, *Ark. United Opinion*, *supra* note 1, at 3.

3. Nov. 3, 2020, *Ark. United Opinion*, *supra* note 1, at 2; *Ark. United*, 517 F. Supp. 3d at 782.

4. Nov. 3, 2020, *Ark. United Opinion*, *supra* note 1, at 6–9.

5. 52 U.S.C. § 10508.

6. Nov. 3, 2020, *Ark. United Opinion*, *supra* note 1, at 10.

7. *Ark. United*, 517 F. Supp. 3d 777; *see* Amended Complaint, *Ark. United*, No. 5:20-cv-5193 (W.D. Ark. Dec. 8, 2020), D.E. 79.

other did not.<sup>8</sup> A provision permitting persons who are not poll workers to assist no more than six voters was preempted,<sup>9</sup> but a provision requiring poll workers to maintain names and addresses of voter assisters was not.<sup>10</sup>

Judge Brooks awarded the plaintiffs \$103,030.43 in attorney fees and costs on January 13, 2023.<sup>11</sup>

Appeals were held in abeyance pending resolution of another case, which was decided on November 20, 2023.<sup>12</sup> In that other case, the court of appeals determined that section 2 of the Voting Rights Act does not provide for private rights of action.<sup>13</sup>

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8. Opinion, *Ark. United*, No. 5:20-cv-5193 (Aug. 19), D.E. 168, 2022 WL 3584626, *as amended*, *Ark. United v. Thurston*, 626 F. Supp. 3d 1064 (W.D. Ark. 2022).

9. *See* Ark. Code § 7-5-310(b)(4)(B).

10. *See id.* § 7-5-310(b)(5).

11. Opinion, *Ark. United*, No. 5:20-cv-5193 (W.D. Ark. Jan. 13, 2023), D.E. 199, 2023 WL 187507.

12. Orders, *Ark. United v. Thurston*, Nos. 22-2918 and 23-1154 (8th Cir. Mar. 6, 2023).

13. *Ark. State Conf. NAACP v. Ark. Bd. of Apportionment*, \_\_\_ F.4th \_\_\_, 2023 WL 8011300 (8th Cir. 2023) (opinion filed at 8th Cir. No. 22-1395), *affg* 586 F. Supp. 3d 893 (E.D. Ark. 2022); *see* Mariana Alfaro, *Ruling on Key Section of Voting Rights Act Could Limit Enforcement Efforts*, N.Y. Times, Nov. 21, 2023, at A5; Nick Corasaniti, *Court Limits Who Can Sue Under Voting Rights Act*, N.Y. Times, Nov. 21, 2023, at A18; Mariah Timms, *Appeals Court Curbs Key Tool to Enforce Voting Rights Act*, Wall St. J., Nov. 21, 2023, at A3.